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(10)

In The

Supreme Court of the United States

HAROLD F. RICE,

Petitioner,

v.

BENJAMIN J. CAYETANO, GOVERNOR OF THE STATE OF HAWAI'I,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE HAWAI'I CONGRESSIONAL DELEGATION AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the United States Congress has the constitutional authority to recognize that a special relationship exists between the United States and the indigenous people of the United States, and to enact laws to protect the rights, lands, and resources of those indigenous people, and whether in the exercise of that constitutional authority and with the agreement of a State, the Congress may delegate certain responsibilities to a State with an additional authorization for the State to assume a public trust for the betterment of the conditions of the native people of that State in a manner provided by the constitution and laws of the State.

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INTEREST OF AMICUS CURIAE [1]

As members of the United States Congress, we have an interest in a ruling by this Court which reaffirms the constitutional authority of the Congress to address the conditions of the native people of the United States and to assure that all of America's indigenous peoples are afforded comparable constitutional, statutory, and trust protections. The Petitioner in effect asks this Court to reverse Congress' long-standing political classification of the native people of Hawai'i as an indigenous people entitled to the same constitutional considerations as other indigenous groups within our republican scheme, and to divest Native Hawaiians of their status as Native Americans.

As members of the State of Hawai'i's congressional delegation, we have a particularized interest in the validation of the Federal laws which have been enacted to provide for the indigenous people of Hawai'i and the actions taken by the State of Hawai'i in furtherance of its Federally-delegated responsibilities.

Senator Daniel K. Inouye served in the Hawai'i Territorial Legislature from January, 1955 until July, 1959. In August, 1959, the Senator began his service in the United States House of Representatives, and since January, 1963, he has served in the United States Senate. Senator Inouye has been a member of the Senate Committee on Indian Affairs for twenty-one years, serving as the Committee's Chairman for eight years and Vice Chairman for the past five years. Senator Daniel K. Akaka is the first United

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici*, its counsel, and Alu Like, Inc. made any monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.3, *amici* state that the parties consented to the filing of this brief in letters filed with this Court.

States Senator of Native Hawaiian ancestry. He represented the State of Hawai'i in the United States House of Representatives from 1976 to 1990, and has served in the United States Senate and as a member of the Senate Committee on Indian Affairs since 1990.

Representative Patsy T. Mink served in the Hawai'i Territorial Legislature from 1956 to 1959 and in the Hawai'i State Senate from 1962 to 1964. Mrs. Mink has served in the United States House of Representatives from 1965 to 1977, and from 1990 to the present. Representative Neil Abercrombie served as a member of the Hawai'i State Legislature from 1974 to 1986, and has represented the State of Hawai'i in the United States House of Representatives since 1991.

STATEMENT OF THE CASE

For the past two hundred and ten years, the United States Congress, the Executive, and this Court have recognized certain legal rights and protections for America's indigenous peoples. The instant Petition asserts violations of the Fourteenth and Fifteenth Amendments to the United States Constitution, without addressing the long-settled constitutional and historical status of America's indigenous peoples, including the native people of Hawai'i and their lands.

Since the founding of the United States, Congress has exercised its constitutional authority over indigenous affairs and has undertaken an enhanced duty of care for America's indigenous peoples. Congress has done this in recognition of the sovereignty possessed by the native people – a sovereignty which pre-existed the formation of the United States. The Congress' constitutional authority is also premised upon the indigenous people's status as the original inhabitants of this nation who occupied and exercised dominion and control over the lands to which the United States subsequently acquired legal title.

The United States recognizes a special political relationship with the indigenous people of the United States.

The indigenous people are Native Americans – American Indians, Alaska Natives and Native Hawaiians. In furtherance of this relationship, the Congress has enacted over 6,000 laws which give expression to the respective legal rights and responsibilities of the Federal government and the native people.

From time to time, with the consent of the affected States, the Congress has sought to more effectively address the conditions of the indigenous people by delegating Federal responsibilities to various States. In 1959, the State of Hawai'i assumed the Federally-delegated responsibility of administering 203,500 acres of land that had been set aside under Federal law for the benefit of the native people of Hawai'i. Haw. Const. art. XVI, § 7. In addition, the State agreed to the imposition of a public trust upon all of the lands ceded to the State upon admission. Hawai'i Admission Act, Pub. L. No. 86-3, § 5(f), 73 Stat. 4, 5 (1959). One of the five purposes for which the public trust is to be carried out is for the "betterment of the conditions of native Hawaiians." *Id.* The Federal authorization for this public trust clearly anticipated that the State's constitution and laws would provide for the manner in which the trust would be carried out. *Id.* §§ 4 & 5(f).

In 1978, the citizens of the State of Hawai'i exercised this Federally-delegated authority by amending the State constitution in furtherance of the special relationship with Native Hawaiians. The delegates to the 1978 constitutional convention recognized that Native Hawaiians had no other homeland, and thus that the protection of Native Hawaiian subsistence rights to harvest the ocean's resources, to fish the fresh streams, to hunt and gather, to exercise their rights to self-determination and self-governance, and the preservation of Native Hawaiian culture and the Native Hawaiian language could only be accomplished in the State of Hawai'i.

The amendments to the State constitution adopted by the citizens of Hawai'i to fulfill the special relationship with Native Hawaiians is consistent with the practice of

other States that have established special relationships with the native inhabitants of their areas. Fourteen States have extended recognition to Indian tribes that are not recognized by the Federal government, and thirty-two States have established commissions and offices to address matters of policy affecting the indigenous citizenry. *See* App. B.

The Petitioner's claims essentially challenge the Congress' constitutional authority to establish a special relationship with the native people of Hawai'i, to enact laws addressing their unique circumstances as indigenous people, and to delegate to the State of Hawai'i certain responsibilities for the protection of the lands set aside for native Hawaiians and for the betterment of their conditions.

SUMMARY OF THE ARGUMENT

This Court has frequently affirmed the Congress' authority to establish a political classification consisting of Native Americans. This Court has also recognized that this constitutionally-based authority is not constrained by the manner in which the native people are organized nor by their ethnological origins. *United States v. Kagama*, 118 U.S. 375 (1886); *Delaware Tribal Bus. Comm. v. Weeks*, 430 U.S. 73 (1977); *see also Pence v. Kleppe*, 529 F.2d 135, 138-39, n. 5 (9th Cir. 1976). The Congress has exercised its constitutional authority in furtherance of the special relationship it has established with the native people of Hawai'i through the enactment of 160 Federal laws which explicitly include Native Hawaiians in the class of Native Americans. *See* App. A.

This Court has also affirmed Congress' authority to delegate Federal responsibilities for administering relations with Native Americans to the States. *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979). In the Hawai'i Admission Act, the United States delegated its principal responsibilities under the Hawaiian Homes Commission Act to the new State. As a

further condition of statehood, the United States imposed a public trust on lands ceded to the State for five purposes, one of which was the "betterment of the conditions of native Hawaiians." Hawai'i Admission Act, § 5(f), 73 Stat. at 6. The Admission Act makes clear that the United States anticipated that the State of Hawai'i's constitution and laws would provide for the manner in which the Hawaiian Homes Commission Act and the public trust would be administered. *Id.*

In the debates of the State's constitutional convention in 1978, the convention delegates repeatedly refer to these Federally-delegated responsibilities with which the State is charged as the authorization for the amendments they propose to the State's constitution. *See* App. D. Thereafter, Hawai'i's citizens voted to adopt the proposed amendments, including the amendment which established the Office of Hawaiian Affairs (OHA) and the election procedures for OHA's Board of Trustees. Since that time, neither the Congress nor the Executive of the United States has ever challenged the amendments, the establishment of the Office of Hawaiian Affairs or the manner in which the Trustees of OHA are elected. Rather, the Congress has enacted laws that expressly recognize the State's role in addressing the conditions of Native Hawaiians and that authorize the Office of Hawaiian Affairs to administer Federal programs. *See, e.g.*, Carl D. Perkins Vocational and Technical Education Act of 1998, 20 U.S.C. § 2301 *et seq.* (1998); Native American Programs Act Amendments of 1987, 42 U.S.C. § 2991 *et seq.* (1998).

The provisions of Hawai'i's Constitution – all consistent with Federal law and policy and all approved by the State's general electorate – are a lawful expression of Congress' delegation to the State of Hawai'i, with the State's consent, of Federal obligations to protect the rights of Native Hawaiians and their lands and resources. Although the United States has also retained the responsibility to address the conditions of the native people of Hawai'i, the State and Federal governments have concluded that their joint effort, reflected in the

Hawai'i Admission Act and the Hawai'i Constitution, can best serve the needs of this particular indigenous group.

INTRODUCTION

There is a history, a course of dealings and a body of law which clearly address the issues raised by the Petitioner in this case. It is a history that begins well before the first European set foot on American shores – it is a history of those who occupied and possessed the lands that were later to become the United States – the aboriginal, indigenous, native people of this land who were America's first inhabitants.

The indigenous people did not share similar customs or traditions. Their cultures were diverse. Some of them lived near the ocean and depended upon its bounty for their sustenance. Others made their homes amongst the rocky ledges of mountains and canyons. Some native people fished the rivers, while others gathered berries and roots from the woodlands, harvested rice in the lake areas, and hunted wildlife on the open plains. Their subsistence lifestyles caused some to follow nomadic ways, while others established communities that are well over a thousand years old.

Those who later came here called them "aborigines" or "Indians" or "natives" but the terms were synonymous. Over time, these terms have been used interchangeably to refer to those who occupied and possessed the lands of America prior to European contact.

Although the differences in their languages, their cultures, their belief systems, their customs and traditions, and their geographical origins may have kept them apart and prevented them from developing a shared identity as the native people of this land – with the arrival of western "discoverers" in the United States, their histories are sadly similar. Over time, they were dispossessed of their homelands, removed, relocated, and thousands, if not millions, succumbed to diseases for

which they had no immunities and fell victim to the efforts to exterminate them.

In the early days of America's history, the native people's inherent sovereignty informed the course of the newcomers' dealings with them. Spanish law of the 1500 and 1600's presaged how the United States would recognize their aboriginal title to land, and treaties became the instruments of fostering peaceful relations. Felix S. Cohen, *The Spanish Origin of Indian Rights in the Law of the United States*, 31 Geo. L.J. 1 (1942).

As America's boundaries expanded, new territories came under the protection of the United States. Eventually, as new States entered the Union, there were other aboriginal, indigenous, native people who became recognized as the "aborigines" or "Indians" or "natives" of contemporary times – these included the Eskimos, and the Aleuts, and the other native people of Alaska, and later, the indigenous, native people of Hawai'i.

For nearly a century, Federal law has recognized these three groups – American Indians, Alaska Natives, and Native Hawaiians – as comprising the class of people known as Native Americans. Well before there was a history of discrimination in this country which the Fourteenth and Fifteenth Amendments were designed to address, this Court had recognized the unique status of America's native peoples under the Constitution and laws of the United States.

The Petitioner urges this Court to adopt a new and most novel distinction that vests in the native people of this land the power to determine, solely by the manner in which they organize themselves, the scope of the constitutional authority exercised by the Congress and the President of the United States. Under the Petitioner's theory, if the native people have not organized themselves as "tribes," then the Executive and Legislative branches of our government do not have the Constitutional authority to establish policies and enact laws which are designed to address their conditions. Implicit in the Petitioner's new construction of the Constitution is the

proposition that the Congress c[annot delegate to the States any authority to address th[e special circumstances of Native Americans who are not tribally-organized, and the States cannot undertake action[s relating to the native people on their own initiative.

Reduced to their essence, t[he Petitioner's claims depend upon a finding by this Co[urt that the provisions of the Constitution which have gi[ven rise to a two hundred and ten year history of Fe[deral legislative enactments, numerous expressions of Fe[deral policy, and a one hundred and sixty-seven-year-old [body of this Court's jurisprudence relating to the nativ[e people of the United States should either be set aside [for purposes of this action, or re-interpreted in such [a manner as to render them inapposite and inapplicable [to this case. To effectively address the Petitioner's cha[rge to this Court, there is clearly much work to be undo[ne.

ARGUMENT

I. THE UNITED STATES CONG[RESS HAS THE CONSTITUTIONAL AUTHORITY [TO ADDRESS THE CONDITIONS OF THE IND[IGENOUS, NATIVE PEOPLE OF THE UNITED S[TATES.

This Court has so often addre[ssed the scope of Congress' constitutional authority to [address the conditions of the native people that it is nov[v well-established.[2]

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[2] "The power of the general g[overnment over these remnants of a race once powerful, now [weak and diminished in numbers, is necessary to their protectio[n, as well as to the safety of those among whom they dwell[. It must exist in that government, because it never has [existed anywhere else, because the theater of its exercise is [within the geographical limits of the United States . . . From [their very weakness and helplessness, so largely due to the c[ourse of dealing of the federal government with them, and th[e treaties in which it has been promised, there arises the duty o[f protection, and with it the power. This has always been recog[nized by the executive,

Although the authority has been characterized as "plenary," *Morton v. Mancari*, 427 U.S. 535 (1974), its exercise is subject to judicial review. *Weeks*, 430 U.S. 73; *United States v. Sioux Nation*, 448 U.S. 371 (1980).[3] It has been held to encompass not only the native people within the original territory of the thirteen states but also lands that have been subsequently acquired. *United States v. Sandoval*, 231 U.S. 28 (1913).

The ensuing course of dealings with the indigenous people has varied from group to group, and thus, the only general principles that apply to relations with the first inhabitants of this nation is that they were dispossessed of their lands, often but not always relocated to other lands set aside for their benefit, and that their subsistence rights to hunt, fish, and gather have been recognized under treaties and laws, but not always protected nor preserved.[4]

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and by congress, and by this court, whenever the question has arisen." *Kagama*, 118 U.S. at 384.

[3] The rulings of this Court make clear that neither the conferring of citizenship upon the native people, the allotment of their lands, the lifting of restrictions on alienation of native land, the dissolution of a tribe, the emancipation of individual native people, the fact that a group of natives may be only a remnant of a tribe, the lack of continuous Federal supervision over the Indians, nor the separation of individual Indians from their tribes would divest the Congress of its constitutional authority to address the conditions of the native people. *Cherokee Nation v. Hitchcock*, 187 U.S. 294 (1902); *United States v. Celestine*, 215 U.S. 278 (1909); *Tiger v. Western Inv. Co.*, 221 U.S. 286 (1911); *United States v. Nice*, 241 U.S. 591 (1916); *Chippewa Indians v. United States*, 307 U.S. 1 (1939); *Weeks*, 430 U.S. 73; *United States v. John*, 437 U.S. 634 (1978).

[4] The courts have recognized and reaffirmed the subsistence rights to hunt, fish and gather of American Indians, Alaska Natives and Native Hawaiians. *Confederated Tribes of Warm Springs Res. v. United States*, 177 Ct. Cl. 184 (1966); *Mitchel v. United States*, 34 U.S. (9 Pet.) 711 (1835); *United States v.*

Some commentators have suggested that no other group of people in America has been singled out so frequently for special treatment, unique legislation, and distinct expressions of Federal policy. Although the relationship between the United States and its native people is not a history that can be said to have followed a fixed course, it is undeniably a history that reveals the special status of the indigenous people of this land. Our laws recognize that the native people do not trace their lineage to common ancestors, and from time to time, our laws have in fact discouraged the indigenous people from organizing themselves as "tribes." But this much we think is true – that for the most part, at any particular time in our history, our laws have attempted to treat the native people, regardless of their genealogical origins and their political organization, in a consistent manner.

The Petitioner asserts that the scope of constitutional authority vested in the Congress is constrained by the manner in which the native people organize themselves. If they are not organized as tribes, then the Congress lacks the authority to enact laws and the President is without authority to establish policies affecting the native people of the United States. However, the original language proposed for inclusion in the Constitution made no reference to "tribes" but instead proposed that the Congress be vested with the authority "[t]o regulate affairs with the Indians as well within as without the limits of the United States." 2 *The Records of the Federal Convention of 1787*, 321 (Max Farrand ed., Yale Univ. Press 1966). A further refinement suggested that the language read,

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Washington, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975); *Six Nations v. United States*, 173 Ct. Cl. 899 (1965); *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339 (1941); *Sac & Fox Tribe v. Licklider*, 576 F.2d 145 (8th Cir. 1978); *United States v. Klamath & Moadoc Tribes*, 304 U.S. 119 (1938); *Alaska Pac. Fisheries v. United States*, 248 U.S. 78 (1918); *Kalipi v. Hawaiian Trust Co.*, 656 P.2d 745 (Haw. 1982); *Pele Defense Fund v. Paty*, 837 P.2d 1247 (Haw. 1992).

"and with Indians, within the Limits of any State, not 'subject to the laws thereof.' " *Id.* at 367.

The exchanges of correspondence between James Monroe and James Madison concerning the construction of what was to become Article I, Section 8, Clause 3 of the Constitution make no reference to Indian tribes, but they do discuss Indians.[5] Nor is the term "Indian tribe" found in any dictionaries of the late eighteenth century, although the terms "aborigines" and "tribe" are defined.[6]

Whether the reference was to "aborigines" or to "Indians," the Framers of the Constitution did not import a meaning to those terms as a limitation upon the authority of the Congress, but as descriptions of the native people who occupied and possessed the lands that were later to become the United States – whether those lands

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[5] In his letter to James Monroe of November 27, 1784, James Madison observes, "[t]he foederal articles give Congs. the exclusive right of managing all affairs with the Indians not members of any State, under a proviso, that the Legislative authority, of the State within its own limits be not violated. By Indian[s] not members of a State, must be meant those, I conceive who do not live within the body of the Society, or whose Persons or property form no objects of its laws. In the case of Indians of this description the only restraint on Congress is imposed by the Legislative authority of the State." 2 *The Founders' Constitution* 529 (Philip B. Kurland & Ralph Lerner ed., 1987) (Letter from Madison to Monroe of 11/27/1784); *see also supra* (Letter from Monroe to Madison of 11/15/1784).

[6] The term "aborigines" is defined as "the earliest inhabitants of a country, those of whom no original is to be traced," and the term "tribe" is defined as "a distinct body of the people as divided by family or fortune, or any other characteristic." *A Dictionary of the English Language* (Samuel Johnson ed. 1755) The annotations accompanying the term "Indian" in the 1901 Oxford dictionary indicate the use of the term as far back as 1553. *Oxford English Dictionary* (James A.H. Murray ed. 1901).

lay within the boundaries of the original thirteen colonies, or subsequently-acquired territories. This more logical construction is consistent with more than two hundred Federal statutes which establish that the aboriginal inhabitants of America are a class of people known as "Native Americans" and that this class includes three groups – American Indians, Alaska Natives, and Native Hawaiians.

The native people of Alaska were not organized as tribes, nor did they have treaties with the United States. Nonetheless, in 1934, in enacting the Indian Reorganization Act, the Congress established that "[f]or purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians."[7] Two years later, the Congress amended the Act to provide a right to organize under the Act for "groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district. . . . " 25 U.S.C. § 473a (1998).

In his effort to exclude the native people of Hawai'i from the class of Native Americans, the Petitioner notes that Native Hawaiians have not organized themselves as tribes and further asserts that the Congress has drawn a distinction between the native people of the continental United States and the native people of Hawai'i on the basis of race.[8] But the Petitioner's assertion ignores the

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[7] Indian Reorganization Act, 25 U.S.C. § 479 (1998); Opinion of the Interior Solicitor, 49 I.D. 592 (1923) (concluding that "[t]he relations existing between (the Alaska Natives) and the Government are very similar and in many respects identical with those which have long existed between the Government and the aboriginal peoples residing within the territorial limits of the United States. . . . ")

[8] "The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." Hawaiian Homes

fact that for many years, blood quantum was also commonly employed in Federal statutes with reference to American Indians and Alaska Natives,[9] and the Federal courts have similarly noted the practice of the Congress to classify native people on the basis of blood quantum.[10] The matter was addressed by this Court in 1974, in *Morton*.[11]

Commission Act, 1920, § 201, 42 Stat. 108 (1921). When capitalized, the term "Native Hawaiian" is commonly used in Federal statutes to refer to "any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i." Act of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510 (1993).

[9] Act of June 18, 1934, Pub. L. No. 73-383, ch. 576, 48 Stat. 984, 988 (codified at 25 U.S.C.A. §§ 479 & 480) (1934) (defining "Indian" as tribal members, descendants of tribal members residing within reservation boundaries on June 1, 1934 and other persons of one-half or more Indian blood and limiting eligibility for certain loans to persons of at least one-quarter degree of Indian blood); Act of June 30, 1919, ch. 4, § 1, 41 Stat. 9 (codified at 25 U.S.C. § 163) (1919) (authorizing the Secretary of the Interior to prepare a final membership roll for any tribe, specifying age and blood quantum).

[10] "It is plain the Congress, on numerous occasions, has deemed it expedient, and within its powers, to classify Indians according to their percentages of Indian blood. Indeed, if legislation is to deal with Indians at all, the very reference to them implies the use of 'a criterion of race'. Indians can only be defined by their race." *Simmons, Jr. v. Chief Eagle Seelatsee*, 244 F.Supp. 808 (E.D. Wash. 1965), aff'd, 384 U.S. 209 (1966). *See also, United States v. First Nat'l Bank of Detroit, Minn.*, 234 U.S. 245 (1914); *United States v. Ferguson*, 247 U.S. 175 (1918).

[11] "Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination,

"The Congress has exercised its constitutional authority through the enactment of 160 Federal laws that either provide for the specific needs or conditions of Native Hawaiians or include Native Hawaiians in the class of Native Americans to be affected by those laws. *See* App. A.

The cultures, languages, traditions, religious belief systems, and the governance structures adopted by the native people of this land are not the same. The indigenous people have no common race or ethnicity. Not all native people have treaties with the United States. Felix S. Cohen, *Handbook of Federal Indian Law*, p. 405 (1942 ed.). Their organization into tribal units is not the hallmark of their status as Native Americans, nor does their recognition by the United States depend upon the continuous existence of a governing entity. *Chippewa Indians*, 307 U.S. 1. Rather, Native Americans have a unique relationship with the United States because they were the original inhabitants of this nation, and they were independent and self-governing at the time of contact. Under the Constitution and consistent, continuous Congressional practice, the classification of Native Americans is neither tribal nor racial, but political.

II. THE UNITED STATES CONGRESS HAS ESTABLISHED THAT AMERICAN INDIANS, ALASKA NATIVES AND NATIVE HAWAIIANS ARE THE INDIGENOUS, NATIVE PEOPLE OF THE UNITED STATES.

Clearly, the Constitution vests the Congress with the power and authority to manage relations with American Indians. For more than a century, Congress has also exercised that authority to address the conditions of Alaska Natives and Native Hawaiians. Following this Court's

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an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized." 417 U.S. at 552.

guidance that our government's relations with the native people are primarily political relationships which are subject to changing circumstances, the Federal courts have generally deferred to the Legislative and Executive branches of the government in fashioning and adapting the terms of those relationships.

Over time, the circumstances of the native people have changed dramatically, in no small part because of radical shifts in Federal policies which have ranged from war, removal, relocation, and termination to recognition, reorganization, restoration, and finally, self-determination and self-governance.

The first native people with whom our national government entered into relations were American Indians. The peaceful course of dealings with them was shaped by treaties, Executive Orders and acts of Congress. Although the native people of Alaska are recognized as ethnologically diverse from American Indians, and although they had no treaties with the United States and were not organized as tribes, as a function of Federal law, they are shareholders in Native regional and village corporations that hold title to Native lands and resources. Alaska Native Claims Settlement Act, 43 U.S.C. § 1606(h) (1998).

Today, in the expression of their self-determination and self-governance, American Indians and Alaska Natives are playing a critical role in the development of Federal law and policy, and are assuming increasingly greater responsibilities for the administration of Federal programs and services. Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.* (1998).

In 1993, the United States Congress and the President of the United States enacted a Joint Resolution acknowledging the one-hundredth anniversary of the January 17, 1893 overthrow of the Kingdom of Hawai'i, extending an apology to the Native Hawaiian people on behalf of the United States for the overthrow of the Kingdom of Hawai'i. Act of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510. That resolution declared that,

> The Congress – (1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people; (2) recognizes and commends efforts of reconciliation initiated by the State of Hawai'i . . . [and] (3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawai'i on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination.

Id.

In the exercise of their right to self-determination and self-governance, Native Hawaiians are engaged in the active consideration of the manner in which they will give expression to their inherent sovereignty. As with the Indian tribes with whom the United States terminated relations and later restored to Federally-recognized status, *see* App. C, the Congress has expressly recognized that the inherent sovereignty of the native people, be they Indian or Native Hawaiian, does not depend for its existence on Federal action.

Such is the nature of the special, political relationships that the United States has carried on with the indigenous, native people of America for the last two hundred years. Each of these relationships has been defined at times with surgical precision, but also with all-encompassing legislative enactments designed to address matters of health, education, housing, employment and training, the preservation of native cultures and languages, the protection of native religions and sacred sites, and the repatriation of Native American human remains.

The more comprehensive enactments of recent times reflect a contemporary reality that is shared by Native Americans, regardless of where they reside or whether

they are American Indian, Alaska Native, or Native Hawaiian. The statistics on America's indigenous people illustrate why such measures have been enacted: the highest rates of mortality associated with various diseases and health conditions in the American population; the greatest need for housing in the United States, including the highest rates of homelessness, substandard dwellings and overcrowding; substantially below-average performance on measures of educational achievement; and rates of unemployment that in many native communities average well above fifty percent and range as high as ninety-five percent.

The native people of the United States are the only Americans who have experienced the disinterment of the human remains of their relatives and families by the thousands, as well as the desecration of graves and sacred sites in similar numbers – a phenomenon which necessitated the enactment of a Federal law, the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.* (1998). Native Hawaiians have been included in the scope of these comprehensive legislative enactments not only because they are indigenous people with whom the United States has recognized a special relationship, but also because the challenges they face in health status, education, housing, poverty and the appalling disposition of their human remains appear to be the lingering vestiges of a history that is sadly common to all the native people of the United States.

The Congress has enacted over 200 Federal laws addressing the shared conditions of Native Americans. More than 6,000 Federal laws have been enacted specifically for American Indians, 245 for Alaska Natives, and 160 for Native Hawaiians.[12]

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[12] The number of Federal laws enacted for the benefit of Native Americans, and those for Alaska Natives, includes only those laws which have been enacted since 1973.

If the constitutional authority of the Congress to address the conditions of the indigenous people of the United States has been exercised more expansively as new States have joined the Union, it is because the native people were not "Indians" in the ethnological sense, but they are "aborigines" in the political sense. The Congress, the President of the United States, and the State and Federal courts have all recognized this classification of Native Americans as one which arises out of Federal law and policy, and which is fundamentally political in nature.

III. THE UNITED STATES CONGRESS HAS DELEGATED AUTHORITY TO THE STATES TO ADDRESS THE CONDITIONS OF THE INDIGENOUS, NATIVE PEOPLE OF THE UNITED STATES.

The manner in which the authority of the States and the Federal government would be exercised in relation to the indigenous, native people of the United States has proven to be a challenging issue from the earliest days of our history as a nation.[13]

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[13] On January 22, 1788, James Madison observed, "The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the articles of confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled; and has been a question of frequent perplexity and contention in the Foederal Councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain." 2 *The Founders' Constitution* at 530.

In 1790, the Congress crafted the first Act to regulate trade and intercourse with the Indians, rendering invalid any sale of Indian lands to any person or State in the absence of an authorization by the United States. Indian Non-Intercourse Act, 25 U.S.C. § 177 (1998).

Later, upon their entry into the Union, several States disavowed the exercise of jurisdiction over the native people and their lands. In 1889, the Enabling Act through which the States of Washington, Montana, North Dakota, and South Dakota secured admission into the Union required that the constitutional conventions of the new States enact provisions by which the people would disclaim title to lands owned by Indians or Indian tribes and would acknowledge that such lands were to remain "under the absolute jurisdiction and control" of the Congress until the United States title was extinguished. The disclaimers were to be made "by ordinances irrevocable without the consent of the United States and the people of the States."[14] Similar disclaimers are found in the enabling or admission Acts of the States of Utah, Oklahoma, Arizona, and New Mexico. Act of July 16, 1894, ch. 138, 28 Stat. 107 (1894) (Utah); Act of June 16, 1906, ch.

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[14] Act of Feb. 22, 1889, § 4, 25 Stat. 676 (1889) (providing that, "[t]he constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, . . . " and "[t]hat the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title . . . to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. . . . ")

3335, 34 Stat. 267 (1906) (Oklahoma); Act of June 20, 1910, ch. 310, 36 Stat. 557 (1910) (Arizona and New Mexico).

However, Federal authority over indigenous affairs has also been delegated to several States. 25 U.S.C. §§ 232 & 233 (1998) (New York); Act of June 8, 1940, ch. 276, 54 Stat. 249 (1940) (Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (1946) (North Dakota); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (1948) (Iowa). In 1953, the Congress enacted the first jurisdictional statute of general application to Indian lands, vesting certain States with authority to exercise jurisdiction over criminal offenses and civil causes of actions committed or arising on Indian reservations within those States. Act of Aug. 15, 1953, Pub. L. No. 83-280, 67 Stat. 588 (1953). That delegation of authority has been sustained by this Court as an appropriate exercise of the Congress' constitutional authority. *Yakima Indian Nation*, 439 U.S. 463.

Public Law 83-280 was enacted during a period when Federal policy endorsed the termination of reservations, the assimilation of native people into the dominant society, and the divestiture of Federal responsibilities relating to Native Americans. This Federal policy was well-established in its implementation at the time the State of Hawai'i was admitted into the Union, and may well explain the absence of the customary disclaimer of state jurisdiction over the native peoples. Instead, the United States delegated its responsibilities under the Hawaiian Homes Commission Act to the State of Hawai'i, and charged the new State with a public trust and affirmative responsibilities to assure "the betterment of the conditions of native Hawaiians." Hawai'i Admission Act, §§ 4 & 5(f), 73 Stat. 4.

Thirty-two other States have established special commissions or offices to address the conditions of the native people. *See* App. B. Fourteen States carry on formal relations with the indigenous people, even though for the most part, there is no explicit delegation of Federal authority to do so. These States have extended State recognition to forty-nine tribes, even though those tribes

are not recognized by the Federal government. *See* App. B. Nonetheless, these "state-recognized" tribes are eligible for certain Federal programs and services. *See, e.g.*, Native American Programs Act, 42 U.S.C. § 2991 *et seq.* (1998); Indian Health Care Improvement Act, 25 U.S.C. § 1601 *et seq.* (1998); National Historic Preservation Act, 16 U.S.C. § 470 *et seq.* (1998).

IV. THE UNITED STATES CONGRESS HAS DELEGATED AUTHORITY TO THE STATE OF HAWAI'I TO ADDRESS THE CONDITIONS OF THE INDIGENOUS, NATIVE PEOPLE OF HAWAI'I.

> At first contact with Europeans, the Hawaiian Islands supported the largest and most densely settled population of any Polynesian island group. There are various estimates of early population, before the ravages of foreign disease took their toll, but a figure of 200,000 Hawaiians is usually regarded as conservative . . . The contact-period society of Hawai'i stands out as one of the most sophisticated, complex, and developed of the many hundreds of indigenous societies and cultures dispersed throughout the Pacific.

Patrick Vinton Kirch, *Feathered Gods and Fishhooks*, pp. 2 & 7 (1985).

A. The Hawaiian Homes Commission Act

Although the present litigation arises out of actions taken by the citizens of Hawai'i pursuant to Federally-delegated authority in the Hawai'i Admission Act, nearly 40 years earlier the United States had set-aside lands in Hawai'i for the benefit of Hawai'i's native people. The administration of this Federal law, the Hawaiian Homes Commission Act, was one impetus for the amendments proposed to the State's constitution in 1978 affecting Native Hawaiians.

In 1826 it was estimated that there were 142,650 full-blooded Hawaiians in the Hawaiian islands. By 1919 their numbers had been reduced to 22,600. Historically, the Hawaiian's subsistence lifestyles required that they live near the ocean to fish and near fresh water streams to irrigate their staple food crop (taro) within their respective ahupua'a.[15] Beginning in the early 1800's, more and more land was being made available to foreigners and was eventually leased to them to cultivate pineapple and sugar cane. Large numbers of Hawaiians were forced off the lands that they had traditionally occupied. As a result, they moved into the urban areas, often lived in severely-overcrowded tenements and rapidly contracted diseases for which they had no immunities.

Interior Department Secretary, Franklin K. Lane, observed in testimony before the House Committee on Territories, "[o]ne thing that impressed me there was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty." H.R. Rep. No. 66-839, at 4 (1920). By 1920, there were many others who were also concluding that the native people of Hawai'i were a "dying race," and that if they were to be saved from extinction, they must have the means of regaining their connection to the land, the 'āina.[16]

The effort to "rehabilitate" this dying race by returning them to the land led Congress to enact the Hawaiian Homes Commission Act on July 9, 1921. The Act sets aside 203,500 acres of public lands (former Crown and

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[15] The ahupua'a is a traditional division of land which is triangular in nature, and encompasses lands from the mountain top to the sea. *Territory v. Bishop Trust Co., Ltd.*, 41 Haw. 358, 361 (Haw. 1956).

[16] 'Aina means land. Pukui, Mary K., and Elbert, Samuel H., *Hawaiian Dictionary*, Honolulu (Univ. of Hawai'i Press, 1986).

Government lands acquired by the United States upon Annexation) for homesteading by native Hawaiians. Hawaiian Homes Commission Act, 1920, § 203, 42 Stat. at 109. Congress analogizes the Act to "previous enactments granting Indians . . . special privileges in obtaining and using the public lands." H.R. Rep. No. 66-839, at 11 (1920).[17]

The Act provides that the lessee must be a native Hawaiian, who is entitled to a lease for a term of ninety-nine years, provided that the lessee occupy and use or cultivate the tract within one year after the lease is entered into. A restriction on alienation, like those imposed on Indian lands subject to allotment, was included in the lease. Also like the General Allotment Acts affecting Indians, 25 U.S.C. §§ 331-334, 339, 342, 348, 349, 354, 381 (1998), the leases were intended to encourage rural homesteading so that native Hawaiians would leave the urban areas and return to rural subsistence or commercial farming and ranching. In February, 1923, the Congress amended the Act to permit one-half acre residence lots and to provide for home construction loans. Thereafter, the demand for residential lots far exceeded the demand for agricultural or pastoral lots. Office of State Planning, Office of the Governor, Pt. I, 1 *Report on Federal Breaches of the Hawaiian Home Lands Trust*, 4-6 (1992).

For the next forty years, during the Territorial period (1921-1959) and the first two decades of statehood (1959-1978), inadequate funding forced the Department of Hawaiian Home Lands to lease its best lands to non-Hawaiians in order to generate operating funds. There was little income remaining for the development of infrastructure or the settlement of Hawaiians on the home

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[17] "Your committee's opinion is further substantiated by the brief of the attorney general of Hawai'i . . . and the written opinion of the solicitor of the Department of Interior. . . . " H.R. Rep. No. 66-839, at 11.

lands. The lack of resources – combined with questionable transfers and exchanges of Hawaiian home lands, and a decades-long waiting list of those eligible to reside on the home lands – rendered the home lands program a tragically illusory promise for most native Hawaiians. *Id.* at 12.

B. Hawai'i Admission Act

As a condition of statehood, the Hawai'i Admission Act required the new State to adopt the Hawaiian Homes Commission Act and imposed a public trust on the lands ceded to the State. The 1959 Compact between the United States and the People of Hawai'i by which Hawai'i was admitted into the Union expressly provides that:

> As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, ***shall be adopted*** as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, ***subject to amendment or repeal only with the consent of the United States, and in no other manner***: *Provided*, That (1) . . . the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund ***shall not be reduced or impaired*** by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, ***shall not be increased, except with the consent of the United States***; (2) that ***any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the manner required for State legislation***, but the ***qualifications of lessees shall not be changed except with the consent of the United States***; and (3) that all proceeds and income from the 'available lands', as defined by said Act, ***shall be used only in carrying out the provisions of said Act***.

Hawai'i Admission Act, § 4, 73 Stat. at 5 (emphasis added).

> The lands granted to the State of Hawai'i by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, ***shall be held by said State as a public trust*** for the support of the public schools and other public educational institutions, ***for the betterment of the conditions of native Hawaiians***, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. ***Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide***, and ***their use for any other object shall constitute a breach of trust for which suit may be brought by the United States***.

Id. § 5(f), 73 Stat. at 6 (emphasis added).

These were explicit delegations of Federal authority to be assumed by the new State. They were not discretionary. The language is not permissive. The United States did not absolve itself from any further responsibility in the administration or amendment of the Hawaiian Homes Commission Act. Nor did the United States divest itself of any ongoing role in overseeing the use of ceded lands or the income or proceeds therefrom. Rather, as the Federal and State courts have repeatedly held, the United States retains the authority to bring an enforcement action against the State of Hawai'i for breach of the section 5(f) trust. *Han, et al. v. United States*, 45 F.3d 333 (9th Cir. 1995); *Pele Defense Fund*, 837 P.2d 1247.

Under the Petitioner's theory, there are no circumstances under which the State of Hawai'i could assume the responsibilities of the Hawaiian Homes Commission Act or fulfill one of the section 5(f) purposes – "the betterment of the conditions of native Hawaiians" – without violating the guarantees of the Fourteenth Amendment to the United States Constitution. But the Congress expressly found that the 1950 Hawai'i State Constitution is "republican in form and in conformity with the Constitution of the United States . . . and is hereby accepted, ratified and confirmed." Hawai'i Admission Act, § 1, 73 Stat. 4.

By 1959, the constitutional authority of the Congress to provide for the conditions of the indigenous people of the United States was well established. The inclusion of sections 4 and 5(f) in the Admission Act is constitutional and is consistent with the body of Federal law and policy which had recognized Native Hawaiians as indigenous, native people of the United States for nearly fifty years. *See* App. A.

C. The Hawai'i Constitutional Convention of 1978

The convening of a constitutional convention is a significant event in most states, and it was not different in Hawai'i. While the claims in this case compel a focus on the establishment of the Office of Hawaiian Affairs, the delegates to the 1978 Constitutional Convention addressed a range of issues related to the native people of Hawai'i. The citizens of Hawai'i subsequently adopted amendments to the State's constitution that reflected a broad-based concern that the conditions of the native people of Hawai'i would require a carefully-considered and comprehensive approach.[18] In addition, the fifty-seven years of

[18] The State's constitutional amendments: (1) recognize the traditional and customary rights Hawaiians exercise for subsistence, cultural, and religious purposes, Haw. Const. art. XII, § 7; (2) direct the State to establish a Hawaiian education program consisting of language, culture, and history in the public schools, *id.* art. X, § 4; (3) provide for the protection of natural resources, particularly the fresh water and ocean resources which are so vital to the native peoples' way of life, *id.* art. XI; (4) reaffirm the public lands trust and establish the Office of Hawaiian Affairs, *id.* art. XII, §§ 4, 5 and 6; (5) reaffirm the trust provisions of the Hawai'i Admission Act, *id.* art. XVI, § 8; (6) establish the Hawaiian language as one of the two official languages of the State, *id.* art. XV, § 4; (7) adopt the former King Kamehameha I's Law of the Splintered Paddle as the symbol of the State's concern for public safety, *id.* art. IX, § 10; and (8) provide for a State motto: "Ua mau ke ea o ka 'āina i ka pono" or "[t]he life of the land is perpetuated in righteousness," *id.* art. XVI, § 5.

experience with the Hawaiian Homes Commission Act program informed the debates in Hawai'i's 1978 Constitutional convention.[19] *See also* App. D.

The Federal policy supporting the rights of native people to self-determination and self-governance had been in place for ten years, and it is clear that the delegates to the convention were looking not only at the past experience under the Hawaiian Homes Commission Act but toward a future when the native people of Hawai'i might be afforded the opportunity to express their right to self-determination and self-governance. Thus, in the Report of the Committee of

[19] One of the delegates to the convention presented the following information on the home lands program: "Today over 113,000 acres of DHHL [Department of Hawaiian Home Lands] lands are leased to the public through leases, revocable permits or licenses. Another 16,000 acres are under governor executive orders, this all coming prior to 1972. Another 22,000 acres are utilized by federal, state and county agencies without document, and another 40,000 acres are classified as conservation. In all, 85 percent of DHHL lands (170,000 acres) are utilized by the general public; 12 percent have actually been utilized by the intended beneficiaries, or 400 acres per annum have been transferred to native Hawaiians since 1920." Debates in Committee of the Whole, 1978 Proceedings of the Constitutional Convention for the State of Hawai'i, 411 (Sept. 2, 1978).

the Whole on the proposed amendments establishing the Office of Hawaiian Affairs, it was stated,

> "The Committee recognizes the right of native Hawaiians to govern themselves and their assets by their assumption of the trust responsibility imposed on the State to better their condition . . . The Committee intends this section to be broad enough to include within its scope the administration and management of the native Hawaiian lands trust created by the Hawaiian Homes Commission Act of 1920 . . . The consolidation of the two trusts [Hawaiian home lands and section 5(f) trusts] under the control and management of a single board would facilitate the attainment of the objective of the two trusts: to provide for the betterment of the conditions of native Hawaiians . . . Your Committee concluded that these Sections 5 and 6, taken together, are of utmost importance for they provide for accountability, self-determination, methods for self-sufficiency through assets and a land base, and the unification of all native Hawaiian people."[20]

The objectives to be achieved through the establishment of the Office of Hawaiian Affairs are remarkably similar to the goals that were the focus of this Court's consideration in *Morton*.[21]

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[20] Proceedings of the Constitutional Convention of Hawai'i of 1978, Journal and Documents, Standing Comm. Rep. No. 59, Vol. I, p. 643.

[21] "The purpose of these preferences, as variously expressed in the legislative history, has been to give Indians a greater participation in their own self-government; to further the Government's trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life . . . The overriding purpose of that particular Act [Indian Reorganization Act of 1934] was to establish machinery whereby Indian tribes would be able to assume a great degree of self-government, both politically and economically . . . The solution ultimately adopted was to strengthen tribal government while continuing the active role of the BIA, with the understanding that the Bureau would be more responsive to the interests of the people it was created to serve . . . [Section 12] was intended to integrate the Indians into the government service connected with the administration of his affairs." 417 U.S. 535.

In keeping with the manner in which the other native people of the United States exercise their right to self-determination and self-governance, the citizens of Hawaii voted to adopt the constitutional amendment establishing the Office of Hawaiian Affairs and also approved the means by which OHA Trustees would be elected. No eligible voting citizen of Hawaii was excluded from exercising this franchise.

Since 1968, the United States has recognized and supported the native peoples' right to self-determination and self-governance. The legislative history of the 1978 Hawai'i State Constitutional Convention makes clear that in establishing the Office of Hawaiian Affairs, the citizens of Hawai'i sought to provide Native Hawaiians with the means to exercise their rights to self-determination and self-governance, consistent with Federal law and policy. As forecast by the delegates to the constitutional convention, *see* App. D, at the appropriate time this exercise in self-governance would be wedded with the exercise of responsibility for administering the lands set aside for native Hawaiians, and the expression of sovereignty which had been lost with the overthrow of the Hawaiian kingdom could once again be made manifest.

CONCLUSION

The Congress has the constitutional authority to establish a political classification of Native Americans consisting of American Indians, Alaska Natives, and Native Hawaiians and to enact laws affecting Native Americans. The Congress has recognized a special relationship with the native people

of Hawai'i and has enacted 160 Federal laws addressing the conditions of Native Hawaiians based upon their status as indigenous people of the United States. The Congress also has the constitutional authority to delegate Federal responsibilities to the State of Hawai'i to provide for the betterment of the conditions of Native Hawaiians and to protect lands set aside under Federal law for their benefit. The establishment of the Office of Hawaiian Affairs and the election of OHA Trustees approved by the citizens of Hawai'i to carry out the responsibilities with which the State of Hawai'i was charged in the 1959 Admission Act is an appropriate exercise of its Federally-delegated authority.

Dated, July 28, 1999

Respectfully submitted,

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APPENDIX A

Table of Federal Acts Affecting Native Hawaiians

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Act of June 21, 1910	Pub. L. No. 61-266, 36 Stat. 703, 718 (1910)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indian and Native Hawaiians.
Act of Mar. 4, 1911	Pub. L. No. 62-525, 36 Stat. 1363, 1395 (1911)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Aug. 24, 1912	Pub. L. No. 63-302, 37 Stat. 417, 436 (1912)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of June 23, 1913	Pub. L. No. 63-3, 38 Stat. 4, 26 (1913)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Aug. 1, 1914	Pub. L. No. 63-161, 38 Stat. 609, 625 (1914)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.

Act of Mar. 3, 1915	Pub. L. No. 63-263, 38 Stat. 822, 838 (1915)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of July 1, 1916	Pub. L. No. 64-132, 39 Stat. 262, 279 (1916)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of June 12, 1917	Pub. L. No. 65-21, 40 Stat. 105, 122 (1917)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of July 19, 1919	Pub. L. No. 66-21, 41 Stat. 163, 181 (1919)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of July 1, 1918	Pub. L. No. 65-181, 40 Stat. 634, 651 (1918)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Act of June 5, 1920	Pub. L. No. 66-246, 41 Stat. 874, 891 (1920)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Mar. 4, 1921	Pub. L. No. 66-388, 41 Stat. 1367, 1383 (1921)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of July 9, 1921	Pub. L. No. 66-34, 42 Stat. 108 (1921)	Creates a homesteading program for Native Hawaiians.
Act of June 12, 1922	Pub. L. No. 67-240, 42 Stat. 635, 643 (1922)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Feb. 3, 1923	Pub. L. No. 67-403, 42 Stat. 1221 (1923)	Amends Hawaiian Homes Commission Act by increasing dollar limits for residential loans and other provisions.

Act of Feb. 13, 1923	Pub. L. No. 67-409, 42 Stat. 1227, 1235 (1923)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of June 7, 1924	Pub. L. No. 68-214, 43 Stat. 521, 528 (1924)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Mar. 3, 1925	Pub. L. No. 68-586, 43 Stat. 1198, 1206 (1925)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Apr. 22, 1926	Pub. L. No. 69-141, 44 Stat. 305, 315 (1926)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Feb. 11, 1927	Pub. L. No. 69-600, 44 Stat. 1069, 1079 (1927)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Act of Mar. 7, 1928	Pub. L. No. 70-105, 45 Stat. 246 (1928)	Amends the Hawaiian Homes Commission Act by requiring an annual area disposal limit and increases the dollar amount within the Hawaiian Home Loan fund.
Act of May 16, 1928	Pub. L. No. 70-400, 45 Stat. 573, 583 (1928)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians, including excavation and preservation of archaeologic remains.
Act of Feb. 20, 1929	Pub. L. No. 70-778, 45 Stat. 1230, 1241 (1929)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.
Act of Apr. 19, 1930	Pub. L. No. 71-158, 46 Stat. 229, 241 (1930)	Authorizes appropriations for the Smithsonian Institute for ethnological research of American Indians and Native Hawaiians.

Act of July 26, 1935	Pub. L. No. 74-223, 49 Stat. 504 (1935)	Requires three of five Hawaiian Homes Commission members to be at least one-quarter Native Hawaiian.
Act of July 10, 1937	Pub. L. No. 75-200, 50 Stat. 497, 503 (1937)	Amends Hawaiian Homes Commission Act by establishing age minimum for lessee and adding more lands under the Act.
Act of June 20, 1938	Pub. L. No. 75-680, § 3, 52 Stat. 784, 784-85 (1938)	Authorizes leasing land within the Hawai'i National Park to Native Hawaiians and recognizes limited Native Hawaiian fishing rights in the area.
Act of Nov. 26, 1941	Pub. L. No. 77-325, § 3, 55 Stat. 782, 782 (1941)	Amends Hawaiian Homes Commission Act by creating a Home Development fund and allowing investing of loan fund.
Act of May 31, 1944	Pub. L. No. 78-320, 58 Stat. 260, 264 (1944)	Amends Hawaiian Homes Commission Act by returning lands under the Commission's jurisdiction to the Territory of Hawai'i .

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Act of June 14, 1948	Pub. L. No. 80-638, 62 Stat. 390 (1948)	Amends Hawaiian Homes Commission Act by authorizing churches, hospitals, schools, theaters, and the Federal government to use the land.
Act of July 9, 1952	Pub. L. No. 82-481, 66 Stat. 511, 514 (1952)	Amends Hawaiian Homes Commission Act by adding lands to the Commission's jurisdiction.
Act of July 9, 1952	Pub. L. No. 82-482, 66 Stat. 514 (1952)	Amends Hawaiian Homes Commission Act by increasing dollar amounts in the Hawaiian Homes Land Fund and the Hawaiian Homes Development Fund.
Act of June 18, 1954	Pub. L. No. 83-417, 68 Stat. 263 (1954)	Amends Hawaiian Homes Commission Act by authorizing leases for irrigated pastoral lands.

Hawai'i Admission Act, Act of Mar. 18, 1959	Pub. L. No. 86-3, § 5(f), 73 Stat. 4, 6 (1959)	Admits Hawai'i as a State and establishes a public trust for the betterment of the conditions of Native Hawaiians, as defined by the Hawaiian Homes Commission Act.
Act of Dec. 23, 1963	Pub. L. No. 88-233, 77 Stat. 472 (1963)	Protects the corpus of the public lands trust, whose intended beneficiaries are Native Hawaiians, by revising procedures under the Hawai'i Statehood Act.
Act of July 11, 1972	Pub. L. No. 92-346, 86 Stat. 457 (1972)	Designates Honokohau as a National Historical Landmark and authorizes preservation of the site, giving employment preference to and providing training for Native Hawaiians.
Native American Programs Act of 1974	Pub. L. No. 93-644, § 801, 88 Stat. 2291, 2324 (1975)	Promotes Native Hawaiian, American Indian, and Alaska Native economic and social self-sufficiency through financial assistance to agencies serving Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Departments of Labor and Health, Education, and Welfare Appropriation Act, 1976	Pub. L. No. 94-206, 90 Stat. 3 (1975)	Appropriates funds for Native American programs (includes Native Hawaiians).
Act of Oct. 17, 1976	Pub. L. No. 94-518, § 401-405, 90 Stat. 2447, 2447, 2449 (1976)	Preserves Kalaupapa Settlement and authorizes a preference for former patients and Native Hawaiians to manage the site.
Act of Aug. 5, 1977	Pub. L. No. 95-93, sec. 303, § 701(a), 91 Stat. 627, 650 (1977)	Amends the Comprehensive Employment Training Act of 1973 to include employment training programs for Native Hawaiians.
Joint Resolution, American Indian Religious Freedom	Pub. L. No. 95-341, 92 Stat. 469 (1978)	Recognizes the rights American Indians, Eskimos, Aleuts, and Native Hawaiians to practice their traditional religions.

Act of Nov. 20, 1979	Pub. L. No. 96-123, 93 Stat. 923 (1979)	Appropriates funds for Native Hawaiian health and human services programs as allowed under authorizing legislation, including assistance to research institutions with Indian, Alaska Native, Native Hawaiian, Hispanic, and Black students.
Education Amendments of 1980	Pub. L. No. 96-374, § 1331, 94 Stat. 1367, 1499 (1980)	Creates Advisory Council on Native Hawaiian Education to study the effectiveness of State and Federal education programs for Native Hawaiians.
Act of Dec. 22, 1980	Pub. L. No. 96-565, §§ 101-110, 94 Stat. 3321, 3321-23 (1980)	Establishes Kalaupapa National Historic Park which shall be administered by Hansen's Disease patients and Native Hawaiians.
Urgent Supplemental Appropriations Act, 1982	Pub. L. No. 97-216, 96 Stat. 180 (1982)	Appropriates funds for nursing research grants and encourages that priority be given to Native Hawaiians, other Native Americans, native American Pacific islanders, and Hispanics.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Supplemental Appropriations Act, 1982	Pub. L. No. 97-257, 96 Stat. 818 (1982)	Appropriates funds to promote economic and social self-sufficiency of Native Americans, including Native Hawaiians; also appropriates funds for Native Hawaiian education and health programs as allowed under authorizing legislation.
Act of July 30, 1983	Pub. L. No. 98-63, 97 Stat. 301 (1983)	Appropriates funds to address the unique health needs of Native Americans, including Native Hawaiians; also urges the National Cancer Institute to give greater attention to the Native Hawaiian population.
Native Hawaiian Study Commission Act	Pub. L. No. 96-565, §§ 301-307, 94 Stat. 3321, 3324-27 (1980)	Establishes Native Hawaiian Study Commission to study the culture, needs, and concerns of Native Hawaiians.

Department of Health and Human Services Appropriation Act, 1984	Pub. L. No. 98-139, 97 Stat. 871 (1983)	Appropriates funds to the Administration for Native Americans which promotes social and economic self-sufficiency for Native Americans. including Native Hawaiians; also appropriates funds to combat alcoholism among Native Hawaiians and declares Native Hawaiian cancer research a priority.
Department of Labor Appropriation Act, 1984	Pub. L. No. 98-139, 97 Stat. 871 (1983)	Appropriates funds for vocational training and other labor services for Native Hawaiians and other Native Americans.
Department of Education Appropriation Act, 1984	Pub. L. No. 98-139, 97 Stat. 871 (1983)	Appropriates funds for Native Hawaiian education programs as allowed under authorizing legislation.
Act of Dec. 21, 1982	Pub. L. No. 97-377, 96 Stat. 1830 (1982)	Appropriates funds to address alcohol abuse among Native Hawaiians.
Act of Aug. 22, 1984	Pub. L. No. 98-396, 99 Stat. 1369 (1984)	Appropriates funds for a Native Hawaiian health study and report.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Act of Oct. 12, 1984	Pub. L. No. 98-473, 99 Stat. 1837 (1984)	Appropriates funds for historic preservation of marine resources, including the Hawaiian voyaging canoe Hokule'a.
Department of Health and Human Services Appropriation Act, 1985	Pub. L. No. 98-619, 99 Stat. 3305 (1984)	Appropriates funds for Native Hawaiian programs to promote economic and social self-sufficiency; also appropriates funds for parent-child centers and for Native Hawaiian cancer research.
Department of Education Act, 1985	Pub. L. No. 98-619, 99 Stat. 3305 (1984)	Appropriates funds for Native Hawaiian education programs as allowed under authorizing legislation.
Act of Dec. 19, 1985	Pub. L. No. 99-190, 99 Stat. 1185 (1985)	Appropriates funds for education assistance to health profession students who will serve geographical concentrations of Native Hawaiians and Indian reservations.

American Indian, Alaska Native and Native Hawaiian Culture and Art Development Act	Pub. L. No. 99-498, §§ 1501-1503, 1521-1522, 100 Stat. 1268, 1600, 1610-11 (1986)	Authorizes grants to support a program for Native Hawaiian culture and arts development.
Anti-Drug Abuse Act of 1986	Pub. L. No. 99-570, § 4134, 100 Stat. 3207, 3207-134 (1986)	Authorizes the Health and Human Services Secretary to contract with organizations that provide drug abuse prevention, education, treatment, and rehabilitation services to Native Hawaiians.
Act of July 11, 1987	Pub. L. No. 100-71, 101 Stat. 391 (1987)	Appropriates funds for the Native Hawaiian Culture and Arts Development Program.
Native American Programs Act Amendments of 1987	Pub. L. No. 100-175, sec. 506, § 803A, 101 Stat. 926, 926-75 (1987)	Establishes Native Hawaiian Revolving loan fund for Native Hawaiian organizations and Native Hawaiians to promote economic development.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Department of Health and Human Services Appropriations Act, 1988	Pub. L. No. 100-202, 101 Stat. 1329-263 (1987)	Appropriates funds for Native Hawaiian health programs under authorizing legislation.
Jacob K. Javits Gifted and Talented Students Education Act of 1988	Pub. L. No. 100-297, sec. 1001, §§ 4101-4108, 102 Stat. 130, 237 (1988)	Authorizes grants or contracts with institutions (including Indian tribes and Native Hawaiian organizations) to carry out programs or projects designed to meet the educational needs of gifted and talented students.
Drug-Free Schools and Communities Act of 1986	Pub. L. No. 100-297, sec. 1001, §§ 5112, 5134, 102 Stat. 130, 253, 261 (1988)	Authorizes education grants, cooperative agreements, or contracts with organizations that primarily serve and represent Native Hawaiians; also appropriates funds for drug abuse education and prevention programs for Native Hawaiians.

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988	Pub. L. No. 100-297, §§ 4001-4009, 102 Stat. 130, 358 (1988)	Recognizes the Federal government's legal responsibility to enforce Hawai'i 's trust responsibilities to Native Hawaiians and creates new education programs targeting a model curriculum, family based education centers, gifted and talented, and special education programs.
Veterans' Benefits and Services Act of 1988	Pub. L. No. 100-322, § 413, 102 Stat. 487, 487 (1988)	Adds Native Hawaiians to the Advisory Committee on Native American Veterans which evaluates programs for Native American veterans.
Indian Housing Act of 1988	Pub. L. No. 100-358, sec. 2, § 204, 102 Stat. 676, 679 (1988)	Requires assessment of the housing and mortgage needs of Native Hawaiians.
National Science Foundation University Infrastructure Act of 1988	Pub. L. No. 100-418, § 6402, 102 Stat. 1107, 1543 (1988)	Reserves percentage of appropriation for institutions of higher learning that serve Native Americans (including Native Hawaiians) and specific ethnic groups.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Department of Health and Human Services Appropriations Act, 1989	Pub. L. No. 100-436, 102 Stat. 1688 (1988)	Appropriates funds for Native Hawaiian health programs under authorizing legislation.
Native Hawaiian Health Care Act of 1988	Pub. L. No. 100-579, 102 Stat. 2916 (1988); Pub. L. No. 100-690, § 2301-2312, 102 Stat. 4181, 4223 (1988)	Authorizes programs to improve the health status of Native Hawaiians; authorizes grants or contracts with Papa Ola Lokahi to develop comprehensive heath care master plan to improve Native Hawaiian health.
Health Professions Reauthorization Act of 1988	Pub. L. No. 100-607, sec. 604, § 751, 102 Stat. 3048, 3126 (1988)	Provides health professionals with incentives to staff health centers serving Native Hawaiians, Indians, and rural areas.

Nursing Shortage Reduction and Education Extension Act of 1988	Pub. L. No. 100-607, sec. 714-715, § 836(h), 102 Stat. 3048, 3161 (1988)	Authorizes grants to nursing schools, loan repayment incentives to encourage work with Native Hawaiians, Indians, or in rural areas, and scholarship grants to nursing schools whose students serve two years at an Indian Heath Service facility or a Native Hawaiian health center.
Handicapped Programs Technical Amendments Act of 1988	Pub. L. No. 100-630, sec. 102, § 616, 102 Stat. 3289, 3296 (1988)	Amends the Education of the Handicapped Act which provides handicapped Native Hawaiian (and other native Pacific basin) children with a free appropriate public education.
Business Opportunity Development Reform Act of 1988 Small Business	Pub. L. No. 100-656, sec. 207, § 8(a), 102 Stat. 3853, 3861 (1988)	Amends the Small Business Act by including economically-disadvantaged Native Hawaiian organizations as socially and economically disadvantaged small business concerns.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988	Pub. L. No. 100-690, sec. 2022, § 1912A, 102 Stat. 4181, 4194 (1988)	Amends the Public Health Service Act by establishing the formula to fund comprehensive substance abuse and treatment programs for Native Hawaiians.
Indian Health Care Amendments of 1988	Pub. L. No. 100-713, sec. 106, § 338J, 102 Stat. 4784, 4787 (1988)	Amends the Public Health Service Act by creating a Native Hawaiian Health Professions Scholarship program.
Department of Health and Human Services Appropriations Act, 1990	Pub. L. No. 101-166, 103 Stat. 1166 (1989)	Appropriates funds for Native Hawaiian health programs under authorizing legislation.
Department of Education Appropriations Act, 1990	Pub. L. No. 101-166, 103 Stat. 1179 (1989)	Appropriates funds for Native Hawaiian education programs under authorizing legislation.

National Museum of the American Indian Act	Pub. L. No. 101-185, 103 Stat. 1336 (1989)	Establishes the National Museum of the American Indian which will study Native Americans, collect, preserve, and exhibit Native American objects, provide a Native American research and study program, and authorizes the return of Smithsonian-held Native American human remains and funerary objects; Native Americans includes Native Hawaiians.
Department of Housing and Urban Development Reform Act of 1989	Pub. L. No. 101-235, §§ 601-605, 103 Stat. 1987, 2052 (1989)	Establishes commission to study and propose solutions to Indian, Alaska Native, and Native Hawaiian housing problems.
Veterans' Benefits Amendments of 1989	Pub. L. No. 101-237, sec. 312, § 3102, 103 Stat. 2062 (1989)	Authorizes the study of Native Hawaiian veterans' and other Native American veterans' participation in Veterans Affairs' home loan guaranty program.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Dire Emergency Supplemental Appropriation for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990	Pub. L. No. 101-302, 104 Stat. 213, 239 (1990)	Authorizes appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian housing and provides grant money to Indian and Hawaiian Native youth for the Drug-Free Schools and Communities Act.
Native American Languages Act	Pub. L. No. 101-477, §§ 101-104, 104 Stat. 1152, 1154 (1990)	Adopts the policy to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages; Native Americans include Native Hawaiians.

Department of Health and Human Services Appropriations Act, 1991	Pub. L. No. 101-517, 104 Stat. 2190 (1990)	Authorizes appropriations for the Native Hawaiian Health Care Act of 1988.
Department of Education Appropriations Act, 1991	Pub. L. No. 101-517, 104 Stat. 2190 (1990)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.
Disadvantaged Minority Health Improvement Act of 1990	Pub. L. No. 101-527, sec. 4, § 782, 104 Stat. 2311, 2321 (1990)	Authorizes grants to health profession schools to assist programs of excellence for Native Hawaiians, other Native Americans, and specified ethnic groups.
Native American Graves Protection and Repatriation Act	Pub. L. No. 101-601, 104 Stat. 3048 (1990)	Provides for the protection of Native American graves and repatriation of funerary objects, human remains, and objects of cultural patrimony; Native Americans include Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Cranston-Gonzalez National Affordable Housing Act	Pub. L. No. 101-625, sec. 917, § 109, 104 Stat. 4079, 4398 (1990)	Authorizes appropriations for the Neighborhood Reinvestment Corporation which serves rural communities, Native Americans, Native Hawaiians, and other communities in need.
Act of Nov. 29, 1990	Pub. L. No. 101-644, sec. 401, § 338J(a), 104 Stat. 4662, 4668 (1990)	Amends the Public Health Service Act by providing scholarship assistance to Native Hawaiian students.
Act of Nov. 29, 1990	Pub. L. No. 101-644, sec. 501-502, §§ 1507, 1510, 104 Stat. 4662, 4668 (1990)	Amends the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act by allowing interest and earnings to be used to carry out the Institute's responsibilities.
National Dropout Prevention Act of 1991	Pub. L. No. 102-103, sec. 311, § 103(b), 105 Stat. 497, 505 (1991)	Amends the Carl D. Perkins Vocational and Applied Technology Education Act by providing stipends to Native Hawaiian vocational students.

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992	Pub. L. No. 102-139, 105 Stat. 736 (1991)	Authorizes appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.
Department of Health and Human Services Appropriations Act, 1992	Pub. L. No. 102-170, 105 Stat. 1107 (1991)	Appropriates funds for Native Hawaiian health programs under authorizing legislation.
Department of Education Appropriations Act, 1992	Pub. L. No. 102-170, 105 Stat. 1107 (1991)	Appropriates funds for Native Hawaiian education programs under authorizing legislation.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Department of Defense Appropriations Act 1992	Pub. L. No. 102-172, 105 Stat. 1150 (1991)	Amends the National Defense Authorization Act so that a disadvantaged small business concern includes a small business concern owned and controlled by socially and economically disadvantaged individuals, an Indian tribe, a Native Hawaiian organization, or an organization employing the severely disabled.
Act of Dec. 11, 1991	Pub. L. No. 102-218, sec. 1, § 317, 105 Stat. 1671 (1991)	Amends title 38 (Veterans' Benefits) to designate the Chief Minority Affairs Officer as an adviser on the effect of policies, regulations, and programs on Native Hawaiians, other Native Americans, women, and minority groups.

ADAMHA Reorganization Act (Alcohol, Drug Abuse, and Mental Health Administration)	Pub. L. No. 102-321, sec. 203, § 1953, 106 Stat. 323, 409 (1992)	Amends the Public Health Services Act by requiring the State of Hawai'i to contract with organizations which plan, conduct, and administer comprehensive substance abuse and treatment programs for Native Hawaiians.
Higher Education Amendments of 1992	Pub. L. No. 102-325, sec. 305, §§ 357(b)(7), 1406, 106 Stat. 448, 479, 818 (1992)	Amends the Higher Education Amendments of 1965 by authorizing Federal repayment of loan for nurses working in a Native Hawaiian Health Center (also in Indian Health Service); gives preference to Teacher Corps applicants intending to teach on Indian reservations or in Alaska Native villages or in areas with high concentrations of Native Hawaiians; also, authorizes biennial education survey on Native Hawaiians, other Native Americans, and other groups including the disabled, disadvantaged, and minority students.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Higher Education Facilities Act of 1992	Pub. L. No. 102-325, sec. 422, § 428J(a), 106 Stat. 448, 541 (1992)	Amends the Higher Education Act of 1965 by authorizing grants and fellowships to promote higher education of Indians, Alaska Natives, and Native Hawaiians, along with specified ethnic groups.
Job Training Reform Amendments of 1992	Pub. L. No. 102-367, sec. 401, § 401, 106 Stat. 1021, 1074 (1992)	Authorizes employment and recruitment preference for Native Hawaiians, Indians, and Alaska Natives for a new office that will administer Native American programs; also creates a Native American Employment and Training Council with membership of Indians, Alaska Natives, and Native Hawaiians that will solicit views on issues program operation and administration.

Older Americans Act Amendment of 1992	Pub. L. No. 102-375, sec. 201, § 201(c)(3), 106 Stat. 1195, 1203 (1992)	Amends the Older Americans Act Amendment of 1965 by creating an advocate for older Indians, Alaskan Natives, and Native Hawaiians to promote enhanced delivery of services and grants, and authorizes appropriations for these activities.
Native American Programs Act Amendments of 1992	Pub. L. No. 102-375, sec. 811, 822, §§ 803A, 811A, 106 Stat. 1195, 1295, 1296 (1992)	Amends Native American Programs Act by requiring the filing of annual report on the social and economic conditions of American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives, and authorizes appropriations for the Native American programs.
Department of the Interior and Related Agencies Appropriations Act, 1993	Pub. L. No. 102-381, 106 Stat. 1374 (1993)	Authorizes appropriations for the Alaska Native Culture and Arts Development Act which also provides funds for Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993	Pub. L. No. 102-389, 106 Stat. 1571 (1992)	Provides for appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing in carrying out functions under the Department of Housing and Urban Development Reform Act of 1989.
Department of Health and Human Services Appropriations Act, 1993	Pub. L. No. 102-394, 106 Stat.1792 (1992)	Specifies funding guidelines for the Native Hawaiian Health Care Act of 1988.
Department of Education Appropriations Act, 1993	Pub. L. No. 102-394, 106 Stat.1792 (1992)	Appropriates funds for Native Hawaiian education programs under authorizing legislation.

Department of Defense Appropriations Act, 1993	Pub. L. No. 102-396, 106 Stat. 1876 (1993)	Amends the Native Hawaiian Health Care Act of 1988 by establishing health goals for Native Hawaiians and scholarships for Native Hawaiian health students.
Joint Resolution to consent to certain amendments enacted by the legislature of the State of Hawai'i to the Hawaiian Homes Commission Act, 1920.	Pub. L. No. 102-398, 106 Stat. 1953 (1992)	Agrees to the adoption of amendments enacted by the State of Hawai'i to the Hawaiian Homes Commission Act of 1920.
Veterans' Medical Programs Amendments of 1992	Pub. L. No. 102-405, § 123, 106 Stat. 1972, 1982 (1992)	Requires development of a plan to treat veterans' post-traumatic stress disorder, especially the needs of Native Hawaiians, other Native Americans, women, and ethnic minorities.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Health Professions Education Extension Amendments of 1992	Pub. L. No. 102-408, sec. 102, § 739, 106 Stat. 1992, 2055 (1992)	Amends the Public Health Services Act by authorizing grants to health professions schools to support programs of excellence in health professions education for Native Hawaiians, other Native Americans, and minority individuals.
Nurse Education and Practice Improvement Amendments of 1992.	Pub. L. No. 102-408, sec. 102, § 846, 106 Stat. 1992, 2031 (1992)	Amends the Public Health Service Act by authorizing the repayment of school loans for nurses who work two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a rural health clinic, or in a public or nonprofit private health facility.

Veterans' Home Loan Program Amendments of 1992	Pub. L. No. 102-547, sec. 8, §§ 3761-3764, 106 Stat. 3633, 3639 (1992)	Amends Title 38 by providing direct housing loans to Native American veterans (including Native Hawaiians) and includes the Department of Hawaiian Homelands in the definition of "tribal organization."
Housing and Community Development Act of 1992	Pub. L. No. 102-550, sec. 128, § 605, 106 Stat. 3672 (1992)	Authorizes appropriations for National Commission on American Indians, Alaska Natives, and Native Hawaiian housing.
Hawai'i Tropical Forest Recovery Act.	Pub. L. No. 102-574, § 4, 106 Stat. 4593, 4597 (1992)	Establishes the Hawai'i Tropical Forest Recovery Task Force which will make recommendations for rejuvenating Hawaii's tropical forests, including the traditional practices, uses, and needs of Native Hawaiians in tropical forests.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
National Historic Preservation Act Amendments of 1992	Pub. L. No. 102-575, sec. 4002, 4006, §§ 2, 101, 106 Stat. 4600, 4753 (1992)	Amends the National Historic Preservation Act to protect Native Hawaiian, Indian, and Alaska Native religious and cultural sites, including authorizing direct grants to Indian tribes and Native Hawaiian organizations to preserve, stabilize, restore, or rehabilitate religious properties.
Veterans Health Care Act of 1992	Pub. L. No. 102-585, sec. 602, § 340B, 106 Stat. 4943, 4967 (1992)	Authorizes Native Hawaiian Health centers to purchase pharmaceuticals at the Federal government-negotiated price.
Department of Health and Human Services Appropriations Act, 1994	Pub. L. No. 103-112, Stat. 1082 (1993)	Authorizes appropriations for the Native Hawaiian Health Care Act of 1988.

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Department of Education Appropriations Act, 1994	Pub. L. No. 103-112, Stat. 1082 (1993)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.
100th Anniversary of the Overthrow of the Hawaiian Kingdom	Pub. L. No. 103-150, 107 Stat. 1510 (1993)	Acknowledges and apologizes for the United States' role in the overthrow of the Kingdom of Hawai'i .
Goals 2000: Educate America Act	Pub. L. No. 103-227, sec. 2-3, 108 Stat. 125, 129 (1994)	Establishes National Education Goals for schools and students from diverse backgrounds, including Indians, Alaska Natives, and Native Hawaiians, the disabled, and limited English-speakers.

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FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
School-to-Work Opportunities Act of 1994	Pub. L. No. 103-239, sec. 3-4, 108 Stat. 568, 572 (1994)	Establishes school-to-work activities to improve the knowledge and skills of youths from various backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, or cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities, students with limited-English proficiency, migrant children, school dropouts, and academically talented students.
Alaska Native Culture and Arts Development Act	Pub. L. No. 103-239, sec. 721, § 1521, 108 Stat. 568, 572 (1994)	Amends the Higher Education Act of 1986 by authorizing grants to organizations that primarily serve and represent Native Hawaiians or Alaska Natives to support Native culture and art programs.

Department of Health and Human Services Appropriations Act, 1995	Pub. L. No. 103-333, 108 Stat. 2539 (1994)	Authorizes appropriations for Native Hawaiian health.
Department of Education Appropriations Act, 1995	Pub. L. No. 103-333, 108 Stat. 2539 (1994)	Authorizes appropriations for Native Hawaiian education.
Department of Defense Appropriations Act, 1995	Pub. L. No. 103-335, 108 Stat. 2599 (1994)	Authorizes preference to Native Hawaiian contractors restoring Kaho'olawe's environment.
Safe and Drug-Free Schools and Communities Act of 1994	Pub. L. No. 103-382, sec. 101, §§ 4004, 4011, 4118, 108 Stat. 3518, 3674, 3674, 3685 (1994)	Authorizes grants for Native Hawaiian-serving institutions to plan, conduct, and administer violence and drug prevention programs.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Native Hawaiian Education Act	Pub. L. No. 103-382, sec. 101, § 9201-9212, 108 Stat. 3518, 3794 (1994)	Recognizes that Native Hawaiians are indigenous people and authorizes, among other things, grants to assist Native Hawaiians in achieving national education goals.
Jacob K. Javits Gifted and Talented Students Education Act of 1994	Pub. L. No. 103-382, sec. 101, § 10201, 108 Stat. 3518, 3820 (1994)	Authorizes grants and/or contracts to Native Hawaiian organizations and Indian tribes to assist in carrying out programs or projects for gifted/talented students.
Improving America's Schools Act of 1994	Pub. L. No. 103-382, sec. 101, § 13102, 108 Stat. 3518, 3878 (1994)	Provides support, training, assistance to grant recipients to improve the quality of education for immigrants, migrants, the poor, American Indians, Alaska Natives, and Native Hawaiians.
Bilingual Education Act	Pub. L. No. 103-382, sec. 101, §§ 7101, 7104, 7136, 108 Stat. 3518, 3716, 3718, 3732 (1994)	Authorizes grants to implement new comprehensive bilingual education programs for Native American and Native Hawaiian languages.

Improving America's Schools Act of 1994 (Part E)	Pub. L. No. 103-382, sec. 101, § 7501, 108 Stat. 3518, 3745 (1994)	Authorizes subgrants from State and local governments to implement a bilingual education program for the ancestral languages of American Indians, Alaska Natives, and Native Hawaiians.
Native American Veterans' Memorial Establishment Act of 1994	Pub. L. No. 103-384, § 2, 108 Stat. 4067, 4067 (1994)	Establishes memorial to recognize contributions of Native American Veterans (American Indians, Native Alaskans, and Native Hawaiians).
Veterans' Benefits Improvements Act of 1994	Pub. L. No. 103-446, sec. 510, § 544, 108 stat. 4645, 4669 (1994)	Authorizes creation of a Center for Minority Veterans and Advisory Committee on Minority Veterans to be more responsive to the needs of Native Hawaiian, American Indian, Alaska Native, and ethnic minority veterans.
Hawaiian Home Lands Recovery Act	Pub. L. No. 104-42, §§ 201-06, 109 Stat. 353, 357 (1995)	Settles Department of Hawaiian Home Lands claims against the Federal government for the value of the lost use of lands by Native Hawaiians.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
The Balanced Budget Down payment Act	Pub. L. No. 104-99, § 115, 110 Stat. 26, 29 (1996)	Authorizes appropriations to cover termination of Native Hawaiian and Alaska Native Cultural Arts
National Defense Authorization Act for FY 1996	Pub. L. No. 104-106, § 524, 110 Stat. 186 (1996)	Authorizes upgrading the Distinguished Service Cross to the Medal of Honor for World War II Native American Pacific Islander veterans (including Native Hawaiians).
Department of Health and Human Services Appropriations Act, 1996	Pub. L. No. 104-134, 110 Stat. 1321 (1996)	Authorizes appropriations for the Native Hawaiian Health Care Act of 1988.
Department of Education Appropriations Act, 1996	Pub. L. No. 104-134, 110 Stat. 1321 (1996)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.

Child Care and Development Block Grant Amendment of 1996	Pub. L. No. 104-193, sec. 614, § 658P, 110 Stat. 2105, 2287 (1996)	Amends the Child Care and Development Block Grant Act of 1990 by authorizing Native Hawaiian organizations to apply for grants or enter into contracts with the Health and Human Services Secretary to improve child care, increase the availability of early childhood development, and increase before and after school care services.
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997	Pub. L. No. 104-204, sec. 213, § 282, 110 Stat. 2874, 2904 (1996)	Authorizes the Housing Secretary to waive anti-discrimination provisions of the Cranston-Gonzalez National Affordable Housing Act for lands set aside under the Hawaiian Homes Commission Act, 1920.
Department of Health and Human Services Appropriations Act, 1997	Pub. L. No. 104-208, 110 Stat. 3009 (1996)	Authorizes appropriations for the Native Hawaiian Health Care Act of 1988 and Older Americans Act of 1965.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Department of Education Appropriations Act, 1997	Pub. L. No. 104-208, 110 Stat. 3009 (1996)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.
National Museum of the American Indian Act Amendments of 1996	Pub. L. No. 104-278, sec. 4, § 11A, 110 Stat. 3355, 3356 (1996)	Amends National Museum of the American Indian Act by authorizing repatriation of Indian and Native Hawaiian sacred or funerary objects and cultural patrimony objects.
Joint Resolution to consent to certain amendments enacted by the legislature of the State of Hawai'i to the Hawaiian Homes Commission Act, 1920.	Pub. L. No. 105-21, 111 Stat. 235 (1997)	Agrees to the adoption of amendments enacted by the State of Hawai'i to the Hawaiian Homes Commission Act of 1920.

Department of Transportation and Related Agencies Appropriations Act, 1998	Pub. L. No. 105-66, 111 Stat. 1425 (1997)	Waives repayment of airport funds that were diverted for the betterment of American Indians, Alaska Natives, and Native Hawaiians.
Department of Health and Human Services Appropriations Act, 1998	Pub. L. No. 105-78, 111 Stat. 1467 (1997)	Authorizes appropriations for the Native Hawaiian Health Care Act and Older Americans Act of 1965.
Department of Education Appropriations Act, 1998	Pub. L. No. 105-78, 111 Stat. 1467 (1997)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.
Museum and Library Services Technical and Conforming Amendments of 1997	Pub. L. No. 105-128, sec. 6, § 262, 111 Stat. 2548, 2549 (1997)	Amends Museum and Library Services Act by authorizing Hawaiian organizations eligible to receive grants (along with American Indian tribes) to electronically link libraries with education, social, or information services.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Workforce Investment Act of 1998	Pub. L. No. 105-220, § 166, 112 Stat. 936, 1021 (1998)	Authorizes grants to Indian Tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations, and Native Hawaiian organizations for employment and training activities.
Rehabilitation Act Amendments of 1998	Pub. L. No. 105-220, sec. 404, § 101 112 Stat. 936, 1163 (1998)	Amends the Rehabilitation Act of 1973 by requiring State agencies to consult with Indian Tribes, tribal organizations, and Native Hawaiian organizations before adopting any policies for vocational rehabilitation services.
Higher Education Amendments of 1998	Pub. L. No. 105-244, sec. 303, § 1001, 112 Stat. 1581, 1638 (1998)	Amends the Higher Education Act of 1965 by authorizing grants to improve education institutions' ability to serve Alaska Natives and Native Hawaiians.

Act of October 14, 1998	Pub. L. No. 105-256, sec. 12, § 10(b)(1), 112 Stat. 1896, 1899 (1998)	Amends the Native Hawaiian Health Care Improvement Act by requiring recipients of the Native Hawaiian Health Scholarship Program to work in the Native Hawaiian Health Care System.
Department of Health and Human Services Appropriations Act, 1999	Pub. L. No. 105-277, 112 Stat. 2681 (1998)	Authorizes appropriations to carry out the Native Hawaiian Heath Care Act of 1988 and the Older Americans Act.
Department of Education Appropriations Act, 1999	Pub. L. No. 105-277, 112 Stat. 2681 (1998)	Authorizes appropriations for Native Hawaiian education programs under authorizing legislation.
Head Start Amendments of 1998	Pub. L. No. 105-285, sec. 117, § 650, 112 Stat. 2702, 2727 (1998)	Amends the Head Start Act by requiring the Secretary of Health and Human Services to prepare and submit a report concerning the condition, location, and ownership of facilities used, or available to be used, by Native Hawaiian Head Start agencies.

FEDERAL ACT NAME	SESSION LAW CITE	SUMMARY
Assets for Independence Act	Pub. L. No. 105-285, §§ 401-416, 112 Stat. 2702, 2759 (1998)	Authorizes Native Hawaiian organizations (and State, local, and tribal governments) to conduct demonstration projects to evaluate the effects of savings, microenterprise, and home ownership on families and the community
Carl D. Perkins Vocational and Technical Education Act of 1998	Pub. L. No. 105-332, sec. 1, § 116, 112 Stat. 3076, 3095 (1998)	Authorizes grants to plan, conduct, and administer vocational programs for Native Hawaiians and other Native Americans.
Native American Programs Act Amendments of 1997	Pub. L. No. 105-361, sec. 3, § 803A, 112 Stat. 3278, 3278 (1998)	Amends the Native Hawaiian Revolving Loan fund to include a loan guarantee.

National Park Service Concessions Management Improvement Act of 1998	Pub. L. No. 105-391, § 416, 112 Stat. 3497, 3516 (1998)	Promotes the sale of authentic American Indian, Alaska Native, and Native Hawaiian handicrafts and makes those revenues exempt from franchise fees.
Health Professions Education Partnerships Act of 1998	Pub. L. No. 105-392, sec. 101, § 736, 112 Stat. 3524, 3525 (1998)	Authorizes grants to assist schools with health professions education programs for Native Hawaiians, American Indians, Alaska Natives, and under-represented minorities.

APPENDIX B

Table of State Indian Affairs Organizations and State Recognized Tribes

State Indian Affairs Organization	Authorized/Created	State Recognized Tribe(s)
Alabama Indian Affairs Commission	ALA. CODE §§ 41-9-708 - 41-9-717 (1998)	-Cherokee of Northeast Alabama -Cherokee of Southeast Alabama -Echota Cherokee -MaChis Lower Creek Tribe -Mowa Band of Choctaw Indians -Star Clan of Muscogee Creek
Arizona Comm'n on Indian Affairs	ARIZ. REV. STAT. ANN. § 41-541 (West 1998)	

California Native American Heritage Commission duties limited to burial and repatriation issues	CAL. PUB. RES. CODE § 5097.91 (West 1998)	
Colorado Comm'n of Indian Affairs	COLO. REV. STAT. ANN. § 24-44-102 (West 1998)	
Connecticut Indian Affairs Council	CONN. GEN. STAT. ANN. § 47-59b (West 1998)	-Golden Hill Paugussett Tribe -Paucatuck Eastern Pequot Tribe -Schaghticoke Tribe
Delaware		-Nanticoke Tribe
Florida Governor's Council on Indian Affairs	Executive order	-Florida Tribe of Eastern Creek

State Indian Affairs Organization	Authorized/Created	State Recognized Tribe(s)
Georgia Council on American Indian Concerns (duties limited to burial/repatriation matters)	GA. CODE ANN. § 44-12-280 (1998)	-Cherokee of Georgia Tribal Council -Georgia Tribe of Eastern Cherokees -Tama (lower Muscogee Creek)
(Indiana) Native American Council		
Iowa Office of the Governor in the process of creating a state Indian Affairs office		
Kentucky Native American Heritage Commission	Executive Order 96-272	

Louisiana Governor's Office of Indian Affairs	LA. REV. STAT. ANN. § 46:2301 (West 1998)	-Choctaw-Apache Community of Ebarb -Caddo Tribe -Clifton Choctaw Tribe -Four Winds Cherokee Band -United Houma Nation
(Maine) Indian Tribal-State Comm'n	ME. REV. STAT. ANN. tit. 30, § 6212 (West 1997)	
Maryland Comm'n on Indian Affairs	MD. ANN. CODE art. 41, § 5-401 (1998)	

State Indian Affairs Organization	Authorized/Created	State Recognized Tribe(s)
Massachusetts Comm'n on Indian Affairs	MASS. GEN. LAWS ANN. ch. 6A § 8A (West 1998)	-Mashpee Wampanoag Tribe -Nipmuc Nation (Chaubunagungamaug Band) -Nipmuc Nation (Hassanamisco Band) -Popasset Wampanoag -Seaconke Wampanoag
(Michigan) Comm'n on Indian Affairs	MICH. COMP. LAWS ANN. § 16.711 (West 1994)	-Gun Lake Tribe -Burt Lake of Ottawa/Chippewa -Grand River Band of Ottawa -Swan Creek/Black River of Ojibwe
(Minnesota) Indian Affairs Council	MINN. STAT. ANN. § 3.922 (West 1998)	

Montana Governor's Office of Indian Affairs	MONT. CODE ANN. § 2-15-217 (1997)	-Little Shell Tribe of Chippewa Indians (Metis)
Nebraska Comm'n on Indian Affairs	NEB. REV. STAT. § 81-2501 (1998)	
State of Nevada Indian Commission	NEV. REV. STAT. § 233A.020 (1997)	
New Jersey Dept. Of State Comm'n on American Indian Affairs	N.J. STAT. ANN. § 52:16A-53 (West 1998)	-Nanticoke Lenni-Lenape Indians of New Jersey, Inc. -Powhatan Renape Nation of Rankokus -Ramapough Mountain Peoples
New Mexico Office of Indian Affairs	N.M. STAT. ANN. § 28-12-4 (Michie 1998)	
New York		-Poospatuck Tribe -Shinnecock Tribe

State Indian Affairs Organization	Authorized/Created	State Recognized Tribe(s)
North Carolina Commission of Indian Affairs	N.C. GEN. STAT. § 143B-404 (1998)	-Coharie Tribe -Haliwa Saponi Indian Tribe -Lumbee Tribe -Meherrin Indian Tribe -Waccamaw Siouan Tribe Indians of Person County
North Dakota Indian Affairs Comm'n	N.D. CENT. CODE § 54-36-01 (1997)	
Oklahoma Indian Affairs Commission	OKLA. STAT. ANN. tit. 74, § 1201 (West 1998)	-Yuchi Tribe -Loyal Shawnee Tribe
Oregon Legislative Commission on Indian Services	OR. REV. STAT. § 172.100 (1998)	
Rhode Island Indian Council, Inc.		

(South Dakota) Office of Tribal Governmental Relations	S.D. CODIFIED LAWS § 1-4-1 (Michie 1999)	
Tennessee Commission on Indian Affairs	TENN. CODE ANN. § 4-34-101 (1998)	
Utah Division of Indian Affairs	UTAH CODE ANN. § 9-9-102 (1998)	
Vermont Governor's Advisory Comm'n on Native American Affairs (volunteer advisory committee that meets monthly)	Executive Order 97-90	

State Indian Affairs Organization	Authorized/Created	State Recognized Tribe(s)
Virginia Council on Indian	VA. CODE ANN. § 9-138.1 (Michie 1998)	-Chickahominy Indian Tribe -Eastern Chickahominy Indian Tribe -Mattaponi Indian Tribe -Monacan Indian Tribe (Amherst County Tribe) -Nansemond Indian Tribe -Pamunkey Indian Tribe -Rappahannock Tribe -Upper Mattaponi Tribe
(Washington) Governor's Office of Indian Affairs		
Wyoming Indian Affairs Council	WYO. STAT. ANN. § 9-2-1903 (Michie 1998)	

APPENDIX C

Table of Restoration, Termination, New Recognition and Other Acts

RESTORATION

CITATION	TRIBE(S) RESTORED
Paskenta Band Restoration Act (Title III of "An Act to provide for the annual publication of a list of federally recognized Indian Tribes"), Pub. L. No. 103-454, 108 Stat. 4791 (codified at 25 U.S.C.A. § 479a) (1994)	Paskenta Band of Nomlaki Indians of the Paskenta Rancheria of California
Auburn Indian Restoration Act (Title II of "An Act to provide for the settlement of the water rights claims of the Yavapai-Prescott"), Pub. L. No. 103-434, 108 Stat. 4526 (1994)	United Auburn Indian Community of the Auburn Rancheria of California
Catawba Indian Tribe of South Carolina Land Claims Settlement Act, Pub. L. No. 103-116, 107 Stat. 1118 (codified at 25 U.S.C.A. § 941) (1993)	Catawba Indian Tribe of South Carolina

Ponca Restoration Act, Pub. L. No. 101-484, 104 Stat. 1167 (codified at 25 U.S.C.A. § 983) (1990)	Ponca Tribe of Nebraska
Coquille Restoration Act, Pub. L. No. 101-42, 103 Stat. 91 (codified at 25 U.S.C.A. § 715) (1989)	Coquille Indian Tribe
Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100-89, 101 Stat. 666 (codified at 25 U.S.C.A. § 1300g) (1987)	Ysleta del Sur Pueblo of Texas; and Alabama and Coushatta Tribes of Texas
Klamath Indian Tribe Restoration Act, Pub. L. No. 99-398, 100 Stat. § 849 (1986)	Klamath Indian Tribe
Coos, Lower Umpqua, and Siuslaw Restoration Act, Pub. L. No. 98-481, 99 Stat. 2250 (codified at 25 U.S.C.A. § 714) (1984)	Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

CITATION	TRIBE(S) RESTORED
Grand Ronde Restoration Act, Pub. L. No. 98-165, 97 Stat. 1064 (codified at 25 U.S.C.A. § 713) (1983)	Confederated Tribes of the Grand Ronde Community of Oregon
Cow Creek Band of Umpqua Tribe of Indians Recognition Act, Pub. L. No. 97-391, 96 Stat. 1960 (codified at 25 U.S.C.A. § 712) (1982)	Cow Creek Band of Umpqua Tribe of Indians
Paiute Indian Tribe of Utah Restoration Act, Pub. L. No. 96-227, 94 Stat. 317 (codified at 25 U.S.C.A. § 761) (1980)	Paiute Indians of Utah (includes Shivwits, Kanosh, Koosharem, Indian Peaks, and Cedar City bands)
Indian Tribal Restoration Act, Pub. L. No. 95-281, 92 Stat. 246 (codified at 25 U.S.C.A. § 861) (1978)	Wyandotte Indian Tribe of Oklahoma, Ottawa Indian Tribe of Oklahoma, Peoria Indian Tribe of Oklahoma, Modoc Indian Tribe of Oklahoma
Siletz Indian Tribe Restoration Act, Pub. L. No. 95-195, 91 Stat. 1415 (codified at 25 U.S.C.A. § 711) (1977)	Confederated Tribes of Siletz Indians of Oregon

Menominee Restoration Act, Pub. L. No. 93-197, 87 Stat. 770 (codified at 25 U.S.C.A. § 903) (1973)	Menominee Indian Tribe

NEW RECOGNITION

CITATION	TRIBE(S) RECOGNIZED
Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act, Pub. L. No. 103-324, 108 Stat. 2156 (codified at 25 U.S.C.A. § 1300k) (1994)	Little Traverse Bay Bands of Odawa Indians of Michigan, Little River Band of Ottawa Indians of Michigan
Act of Sept. 21, 1994, Pub. L. No. 103-323, 108 Stat. 2152 (codified at 25 U.S.C.A. § 1300j) (1994)	Pokagon Band of Potawatomi Indians of Michigan
Aroostook Band of Micmacs Settlement Act, Pub. L. No. 102-171, 105 Stat. 1143 (codified at 25 U.S.C.A. § 1721) (1991)	Aroostook Band of Micmac Indians of Maine
Hoopa-Yurok Settlement Act, Pub. L. No. 100-580, 102 Stat. 2924 (codified at 25 U.S.C.A. § 1300i) (1988)	Yurok Tribe of Yurok Reservation (Reconstitution of a recognized tribe, which at the time had no organized government and no membership list, on a new reservation split off from the Hoopa Valley Reservation.)

Lac Vieux Desert Band of Lake Superior Chippewa Indians Act, Pub. L. No. 100-420, 102 Stat. 1577 (codified at 25 U.S.C.A. § 1300h) (1988)	Lac Vieux Desert Band of Lake Superior Chippewa Indians
Texas Band of Kickapoo Act, Pub. L. No. 97-429, 96 Stat. 2269 (codified at 25 U.S.C.A. § 1300b) (1983)	Texas Band of Kickapoo Indians (renamed Kickapoo Traditional Tribe of Texas, 1989)
Mashantucket Pequot Indian Claims Settlement Act, Pub. L. No. 98-134, 97 Stat. 851 (codified at 25 U.S.C.A. § 1751) (1983)	Mashantucket Pequot Tribe
Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96-420, 94 Stat. 1785 (codified at 25 U.S.C.A. § 1721) (1980)	Houlton Band of Maliseet Indians

TERMINATION

CITATION	TRIBE(S) TERMINATED
Act of Aug. 18, 1958, Pub. L. No. 85-671, 72 Stat. 619 (1958) *as amended by* Act of Aug. 11, 1964, Pub. L. No. 88-419, 78 Stat. 390 (1964)	Forty-one rancherias under the California Rancheria Act
Act of Sept. 5, 1962, Pub. L. No. 87-629, 76 Stat. 429 (codified at 25 U.S.C.A. § 971) (1962)	Ponca Tribe of Nebraska
Act of Sept. 21, 1959, Pub. L. No. 86-322, 73 Stat. 592 (1959)	Catawba Tribe of South Carolina (repealed Oct. 27, 1993)
Act of July 10, 1957, Pub. L. No. 85-91, 71 Stat. 283 (1957)	Coyote Valley Rancheria
Act of Mar. 29, 1956, ch. 100, 70 Stat. 58 (1956)	Lower Lake Rancheria in California

Act of Aug. 1, 1956, ch. 843, 70 Stat. 893 (1956)	Wyandotte Tribe of Oklahoma (repealed 1978)
Act of Aug. 2, 1956, ch. 881, 70 Stat. 937 (1956)	Peoria Tribe of Oklahoma (repealed in 1978)
Act of Aug. 3, 1956, ch. 909, 70 Stat. 963 (1956)	Ottawa Tribe of Oklahoma (repealed in 1978)
Act of June 17, 1954, ch. 303, § 1, 68 Stat. 250 (codified at 25 U.S.C.A. § 891) (1954)	Menominee Tribe of Wisconsin (repealed in 1973)
Act of Aug. 13, 1954, ch. 732, § 1, 68 Stat. 718 (codified at 25 U.S.C.A. § 564) (1954)	Klamath Tribe of Oregon (repealed in 1978 with respect to Modoc Tribe)
Act of Aug. 13, 1954, ch. 733, § 1, 68 Stat. 724 (codified at 25 U.S.C.A. § 691) (1954)	Sixty-one tribes and bands in western Oregon (repealed 1977 with respect to the Siletz Tribe)
Act of Aug. 23, 1954, ch. 831, § 1, 68 Stat. 768 (codified at 25 U.S.C.A. § 721) (1954)	Alabama and Coushatta Indians of Texas

CITATION	TRIBE(S) TERMINATED
Act of Aug. 27, 1954, ch. 1009, 68 Stat. 868 (codified at 25 U.S.C.A. § 677 *et seq.*) (1954)	Mixed-blood Utes of the Uintah and Ouray Reservation in Utah
Act of Sept. 1, 1954, ch. 1207, 68 Stat. 1099 (codified at 25 U.S.C.A. § 741) (1954)	Southern Paiutes of Utah (repealed in 1980)

OTHER

CITATION	TRIBE(S)	COMMENT
Tlingit and Haida Status Clarification Act (Title II of "An Act to provide for the annual publication of a list of Federally recognized Indian Tribes"), Pub. L. No. 103-454, 108 Stat. 4791 (codified at 25 U.S.C.A. § 1212) (1994)	Central Council of Tlingit and Haida Indian Tribes of Alaska	Reaffirmation of Federal Recognition
Indian Law Technical Amendments of 1987, Pub. L. No. 100-153, 101 Stat. 886 (codified at 25 U.S.C.A. § 331 nt; 25 U.S.C.A.§ 373; 25 U.S.C.A. 1401; 25 U.S.C.A. 2301) (1987)	Frank's Landing Indian Community	Makes residents of the Community eligible for Federal Indian services but does not create or establish the Community as a Federally-recognized tribe.

APPENDIX D

Excerpts from Proceedings of the 1978 Hawai'i State Constitutional Convention

DEBATES IN THE COMMITTEE OF THE WHOLE ON HAWAIIAN AFFAIRS

September 2, 1978 (pp. 411-26) Hawaiian Home Lands

DELEGATE DE SOTO: . . .

Today over 113,000 acres of [Department of Hawaiian Home Lands ("DHHL")] lands are leased to the public through leases, revocable permits or licenses. Another 16,000 acres are under governor executive orders, this all coming prior to 1972. Another 22,000 acres are utilized by federal, state and county agencies without document, and another 40,000 acres are classified as conservation. In all, 85 percent of DHHL lands (170,000 acres) are utilized by the general public; 12½ percent have actually been utilized by the intended beneficiaries, or 400 acres per annum have been transferred to native Hawaiians since 1920. At that rate, it would take over 400 years to fully dispose of the lands, provided the department could regain those lands utilized by the government and public sector. Mr. Chairman, this is 1978, 130 years after the Great Mahele, and the *maka [ā]inana* are still a landless, drifting nonentity. Through no fault of their own, they have been foreclosed from the breath of life – the *'[ā]ina*.

. . .

DELEGATE ONTAI: . . . As most of you know – but I'll repeat it for emphasis – the Hawaiian homes department and the act were and are the most neglected part of the State of Hawai['i, the most neglected department. It was woefully lacking in funds at its inception, and for the past 50 years and even today, it lacks funds to run the department properly, lacks funds to construct homes and

facilities necessary to service existing and future applicants.

At its inception the act was designed to fail, as most of you know . . . [T]here was no intention of putting all the applicants on the lands. Most of the lands that were given to the Hawaiian homes department were called junk lands. The word *'opala* was used earlier and would aptly describe these lands. In 1920 (approximately), when the act was being discussed in Congress, one congressman in referring to these lands used the words "junk lands" – it's in the congressional record and that is why I use the term. I've seen most of the lands myself – they are junk lands. The land the people are on today, and most of it at the time the people went on it, was junk land. Thank goodness for modern times, with roads, utilities and job markets spread out into the country.

. . .

A funding setup for the Hawaiian homes act in 1920 was made and made for failure. It was doomed to failure; it did not take into account the increasing numbers of applicants coming into the program or the increasing costs of construction. Today funds are absolutely depleted, except using their own funds. They can barely build 50 homes a year. As you all know, there are several hundred new applicants every year. If the Hawaiian homes department were given good lands, no doubt the applicants coming in every year, instead of two or three hundred, probably would double or triple when it was known that good lands were available instead of junk lands way out in the boondocks. It is time to correct the inequities, injustices and, I might say, the deliberate

deceit – or perhaps more of fraud – perpetrated on the Hawaiian in 1920 and for the past 50 years. I feel, and I know most of us feel, it is high time we correct all the injustices, inequities and the fraud and deceit that were played upon the Hawaiian people. This is the time.

DEBATES IN THE COMMITTEE OF THE WHOLE ON HAWAIIAN AFFAIRS
September 2, 1978 (pp. 425-36) **Hawaiian Cultural Education**

DELEGATE DE SOTO: Mr. Chairman and fellow delegates, I rise to speak in favor of the Committee Proposal No. 12. There are five significant sections contained within the proposal. Amendments are made to Articles IX, XIII, XIV and I.

Section I amends Article IX by adding the following, entitled "Hawaiian Education Program. The State shall provide for a comprehensive Hawaiian education program consisting of language, culture and history as part of the regular curriculum of the public schools.["]

"The use of community expertise shall be encouraged as a suitable and essential means in furtherance of Hawaiian language, culture and history."

. . .

Your Committee determined that one ethnic group that may be a rich source for just such a study is the Hawaiian culture, with its emphasis on group responsibility and success, and the *'ohana* extended family system. The Hawaiian culture survived and thrived in environmental harmony on a relatively small land area.

Section 2 of Committee Proposal No. 12 deals with official languages. We propose that "English and Hawaiian shall be the official languages of Hawai['i, except that Hawaiian shall be required for public acts and transactions only as provided by law." Your Committee decided to make this amendment to the Constitution in order to give full recognition and honor to the rich cultural inheritance that Hawaiians have given to all ethnic groups of the State.

The purpose of Committee Proposal No. 12, section 4, is to recognize, reaffirm and protect those traditional and customary rights of native Hawaiians. As native Americans, Hawaiians have inherent and fundamental rights to the free exercise of ancient activities necessary for the purposes of sustenance, culture and religion. These rights are partially reaffirmed by the State Constitution as well as by many state laws. The recognition of traditional native Hawaiian fishing rights outside the public use of certain fisheries is upheld in Article X, Section 3, of our State Constitution. The codification of traditional native Hawaiian access, water and gathering rights for sustenance purposes is found in Section 7-1 of our *Hawai['i Revised Statutes*, originally part of the Kuleana act of 1850.

Despite these laws, the inability of poor Hawaiians to gain access to the courts, the lack of government efforts to protect Hawaiian rights and the judiciary's unwillingness to enforce these rights have resulted in making Hawaiians strangers in their own homeland. Native Hawaiians who practice or wish to follow the ancient ways of their ancestors face more and more "keep out" signs, barbed wire fences, locked gates and government prosecution for trespass. How long are we going to

deprive a people of their culture and heritage? Ignorance, apathy, callousness and neglect are keynotes of this government's interaction with traditional Hawaiian religion and culture. This state of affairs is caused by a common misconception that such Hawaiian use rights somehow do not have any validity in today's society. What are we going to do with the many Hawaiian taro farmers sprinkled throughout the State who are deprived of their water rights because large business entities are diverting water? What are we to do with the many Hawaiians who depend on access to the sea and mountains to feed their families? What are we to say to the Hawaiian children who wish to visit the burial grounds of their *kupuna?* Do we tell them to visit Bishop Museum or see a tourist show if they want to learn about their Hawaiian culture, values and identity? Or are we going to allow them to become part of their culture?

Mr. Chairman, in ancient Hawai[ʻ]i an individual did not own land or water; there was no such thing as private ownership. Hawaiian society was based on the welfare of the community and a sharing of the water and its products. Under the ancient value system of *aloha ʻāina*, Hawaiians respected the land and practiced conservation of natural resources. They respected each other's property rights; they did not arbitrarily invade another person's cultivated area if they wanted some taro or bananas.

Committee Proposal No. 12, section 4, does not attempt to grant unregulated, abusive and general rights to native Hawaiians and only native Hawaiians; rather, it allows tenants of an *ahupua ʻa* – and not all native Hawaiians – access rights to the mountains and sea, as was traditionally and customarily asserted by their ancestors.

This is very important since the large landowners – basically 10 to 12 corporations and estates which own almost 90 percent of all private lands – have intruded upon, interfered with and refused to recognize such rights. Sustenance, religious and cultural practices of native Hawaiians are an integral part of their culture, tradition, and heritage, with such practices forming the basis of the Hawaiian identity and value systems.

. . .

If the delegates to this Convention sincerely wish to preserve the small remaining vestiges of a rapidly disappearing culture, the solution is to provide the recognition and reaffirmation of native Hawaiian rights by constitutional amendment. I strongly recommend passage of this proposal because such action would help to perpetuate a heritage that is unique and an integral part of our State.

. . .

DELEGATE NOZAKI: I rise to speak in favor of section 1, entitled "Hawaiian Education Program." It is time to recognize the fact that Hawaiian values are as important as other values in our multicultural State, and that these values should be given equal consideration and recognition. We cannot deny the reality that Hawaiian values do influence us in all phases of our life, whether we realize it or not.

It is time to wipe out the alienation of the Hawaiian people in the schools. Of most importance is the blossoming of the Hawaiian renaissance which we are experiencing at this very moment. The time is right for change.

How do we begin to change? We must start with education. The State should provide for a comprehensive Hawaiian education program. The State must mandate the provision for Hawaiian studies for two main reasons. First, it will guarantee a meaningful program – not the piecemeal kind of program that now exists. What we have now in the schools is fragmented and not even an introduction to Hawaiian culture – that's how sketchy it is. Secondly, if it is mandated, we can be assured that it will be taught properly.

The committee proposal recommends the inclusion of language, history and culture. These three elements are necessarily tied together. Language is essential to gain insight into the feel of the culture; through language we realize the innuendos and beauty of a culture. By studying his own ethnic history, the Hawaiian student becomes politically aware and develops into an effective citizen. By studying his own culture, he becomes socially aware and develops individual pride, identity and self-realization. There are also benefits to the community and the schools. Hawaiiana stresses cooperative rather than competitive behavior. Other students benefit through understanding the background of the Hawaiians. All students will learn that there are not just differences between Hawaiians and others, but that there are many things they all have in common. Through these kinds of developments, we can look forward to a decrease in alienation in the community. And all this can be the result of providing for a comprehensive Hawaiian education program in the schools.

It is the duty and responsibility of this State to preserve all aspects of Hawaiiana in education, for it is this State which is the home of the Hawaiian people.

. . .

DELEGATE STERLING: . . . I'd like to speak in favor of the section of the committee proposal on Hawaiian education. The main thrust of this section is toward things of value – the sophisticated, proven culture that sustained thousands and thousands of people in a very healthy manner prior to contact with Western civilization: a culture that allowed navigation of thousands of miles of open sea long before the Vikings faced the open sea; a calendar that considered the subtle differences between a normal calendar year, the tropic year and the sidereal year as we know it, the leap year; an advanced system of irrigation; and advance knowledge of astronomy. These are just a few points of this very sophisticated culture that existed in Hawai[ʻ]i prior to contact with the Western world. This is their heritage, as one of the previous speakers said, that we leave to our children.

. . .

DELEGATE KAAPU: . . .

I was fortunate to have grown up in that surrounding as I got to appreciate the feel of living in a grass house, working in taro patches, doing all these things. My father wore a *malo* – he was quite a sight to behold, but the Hawaiians in the area viewed him with mixed feelings. Some were ashamed to see him naked like that; from the teachings in school and from the attitudes that were

conveyed to them by those who controlled the educational system, they felt that this was somehow something to be ashamed of and they regarded him askance. And yet there were many from the mainland and other parts of the world – celebrities like President Roosevelt – who made it a point to drop in and visit him and see the way he lived, because they felt that it had great value. And for that reason, some of the Hawaiians in the area felt there must be something to it, so they were ambivalent, they had differing feelings: he was a celebrity, yet at the same time he did things they were taught to be ashamed of. Schoolchildren came in great numbers to see how the old Hawaiians lived; they watched him pound poi, they watched him eat raw fish, they were shown all these things because this was the only opportunity they had to learn. So they came from all over the State, and all over the world for that matter.

However, I was not privileged to learn the Hawaiian language because, although I learned to live in the old way, it was not offered in the schools I went to. Nor were there courses adequate to teach me things I had to learn, very fortunately, from my own experience. Now, many years later I see with great happiness the spread of awareness, that the opportunities are even greater. And yet my son – who just left for Harvard a few days ago, having worked here in the Con Con for several weeks – was only learning Hawaiian as he got aboard the plane. He took his language book with him, and he's trying to master the phrases contained therein, although at his school (a public school) he had already had seven years of Japanese and could read, write and speak it.

So while I could not discourage the efforts that have been made to this point, I think this proposal and this section in this Constitution, which would give encouragement to this, would be appropriate . . . But I also support it for another reason: to come to know a culture is to come to appreciate it, and to appreciate a culture is to respect it. And those who respect it will not destroy it. And to come to know this land and the traditions associated with the land in the early ages and in the schools, in a curriculum and in a course that is given the dignity of being regarded as one of the most important by its recognition within the Constitution, I think will convey to our young people the kind of appreciation and respect – not only for the land but for the culture derived from that land, and for the people, and for the language and customs that they developed. And for that reason also, I support this. Because those who study the Constitution and find in it an indication of the importance we place upon the Hawaiian culture and language, and who gain this opportunity in the schools, will come to know the Hawaiian culture, the Hawaiian feeling, the Hawaiian spirit and our land, and they will therefore preserve it and not destroy it.

. . .

DELEGATE HOE: . . . I feel that continuing displacement and more and more pressures against the native Hawaiian's rights make it just and proper that the State at this time reaffirm and vow to protect the rights of the native Hawaiian, as this proposal states. If we are to assure the future of the Hawaiian culture, which all of us recognize as a basic and essential part of our State for all residents, and if we acknowledge that Hawai[ʻ]i is the

only land where the Hawaiian culture can exist, it is paramount that we endorse this legal action to protect the traditional and customary rights of native Hawaiians.

. . .

All rights must function in relation to all others. What this proposal does – and what we must do by supporting it – is to protect those rights which today are being threatened and slowly eroded – the rights of native Hawaiians for subsistence, cultural and religious purposes.

. . .

DELEGATE DE SOTO: . . .

These customary and traditional rights are slowly being extinguished. Fences and roads are going up so we no longer have access to the ocean in many areas. Large landowners who own an entire section of an island shut out the public and the native Hawaiian from the beaches, which are public property. In going through the outer islands receiving testimony, we have received – and you, Mr. Chairman, heard the testimony, when many native Hawaiians stood before this committee and cried – grown men, grown women – declaring to this committee and its members that their right of access to the beach had been infringed upon; where, indeed, their family for generations had practiced going to the ocean for their subsistence and sustenance, was now blocked off by large landowners.

Their appeal, their cry to this Committee on Hawaiian Affairs was to help them do something about this. The one point in particular that stands out vividly in my

mind is of a man who said, with tears rolling down his face, that he cannot get to the area where his family had fished for generations, and on a pension of $276 a month is now forced to buy his fish. Consequently, fish is no longer in his diet.

DEBATES IN THE COMMITTEE OF THE WHOLE ON HAWAIIAN AFFAIRS
September 2, 1978 (pp. 457-60) Office of Hawaiian Affairs

DELEGATE DE SOTO: . . .

The primary purpose of proposal 13 is to grant to Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare. Proposal 13 amends Article XI of the Constitution of the State of Hawai[']i by including in Article XI that portion of the trust created by Section 5(f) of the Admission Act for the benefit of native Hawaiians. It establishes the Office of Hawaiian Affairs and an elected board of trustees to administer the trust created for the benefit of all Hawaiians. The board of trustees is granted the authority to formulate policy relating to the affairs of all Hawaiians. It unites Hawaiians as a people and allows Hawaiians to affirmatively better their condition by giving them the opportunity to assume the trust obligation imposed on the State by Section 5(f) of the Admission Act and to discharge the trust obligation by careful assessment and planning for the future welfare of all Hawaiians. The goal of the Office of Hawaiian Affairs is to address the modern-day problems of Hawaiians which

are rooted in as dark and sad history as will ever mark the annals of time.

Before the advent of the foreigner, the Hawaiians had succeeded in developing a culture that was truly remarkable. They took from the *'[ā]ina* and from the sea for sustenance. In the words of Ralph S. Kuykendall, one of the most thorough of the historians of Hawai['i, Hawaiians were "a healthy, robust, intelligent, and good tempered folk" who lived religiously, arduously and intelligently.

As evidenced by the feats of the *Hokule'a*, the pre-Captain Cook Hawaiians were great sailors, traveling long distances in canoes. They were great navigators, with an almost mystic knowledge of the stars. They were great fishermen. They were great farmers and engineers. In the raising of taro, the Hawaiians perfected a technique of building irrigation ditches, a feat requiring no little industry and ingenuity, which has never been improved on. They were great doctors, skilled in the use of herbs. They were a great and proud people.

The land system before the coming of the foreigner was inseparably a part of religion and government. To destroy one was to destroy the other. The Hawaiians worshiped nature, which expressed itself in a system of rules – *kapus* – that regulated their daily lives. The islands were divided into kingdoms, each ruled by a king. In land matters, as in many others, the king's words were supreme. Part of the land the king reserved for himself for his own private use; the rest he portioned out to his

subordinates, who in turn portioned it out to their subordinates, all the way down to the *hoa 'ā[ina*, who tilled the soil.

In the life the Hawaiians lived before the foreigners, there was no future orientation. The gods were immediate to the common people and so were the kings; they gave directly and took away directly. Tomorrows were only a succession of todays. This was, thought the Hawaiian, as it should be; it was all he knew. If you took away his religion, his government, if you took him away from the *'[ā]ina* or from the economy that he knew, you destroyed him. And many people did do this.

With the first real influx of foreign invaders near the end of the 18th century, the change from the Hawaiian subsistence economy – and with it the whole cultural structure – to an exchange economy began at an astonishingly accelerated speed. Mr. Chairman, by 1820, when the first missionaries arrived, Kamehameha II had formally abolished the *kapu* system, thus knocking the props from under the old system of religion. The fur trade, the sandalwood trade, the whaling trade, and their accompanying influences had already infected the native culture and had neglected to provide any healing power.

The new ideas and practices, incomprehensible to the Hawaiians yet powered irresistibly by the superior prestige and force of the invaders, broke the force of the old *kapu* system. It also weakened the tie between the commoners and the chiefs, who had been their leaders from time immemorial.

By 1840, native morale had all but been destroyed. The new ways may have been superior, but to Hawaiians

this was little compensation for the destruction of the old and the familiar. Thousands of Hawaiians died. From the missionary estimate in 1826 to the official Hawaiian census in 1919, the number of full-blooded Hawaiians had decreased from 142,650 to 22,500, while the Hawaiian death rate had correspondingly increased until it exceeded considerably the death rate of any other race inhabiting the Islands at that time.

Mr. Chairman, the Hawaiian had become hopelessly land-less. All the stories that have been told with respect to the Great Mahele and that divisioning of land – finally the inevitable happened: our *mo'i wahine* Queen Lili'u'okalani was dethroned – a bloodless revolution but a queen deposed, a legitimate monarchy overthrown. Many, many injustices have been documented in our history. All these injustices have caused us now to stand in public and bare our souls once more, bare our souls so that someone, someplace will begin to listen.

Mr. Chairman, fellow delegates, if there must be a statement of need before Committee Proposal No. 13 is accepted or adopted by this Convention, then surely the following statistics indicate it: according to the 1975 census updates, the present Hawaiian population is a young one; there are roughly 60,000 Hawaiians, or approximately 54 percent of the total Hawaiian population, who are under the age of 20. It is my dream and the dream of my people that the Hawaiian today be given the opportunity to provide for betterment of the condition and well-being of these young Hawaiians, to address the contemporary problems which Hawaiians face – of crime; inadequate housing conditions, welfare rolls, education. Committee Proposal No. 13, Mr. Chairman, I submit,

attempts to build the steps for native Hawaiian people so that they may realize, or at least decide some point in, self-determination.

All kinds of people have helped us in the planning. Your Committee on Hawaiian Affairs begs this Convention to consider, and submits that this native Hawaiian office is essential for the protection and the preservation of the Hawaiian race. I ask all of you to consider this and adopt this proposal. Mahalo.

. . .

DELEGATE KAAPU: . . . The proposal of a Hawaiian trust is analogous to creating an entity like that of the University of Hawai[']i, which has the power to hold and own property, to create and administer programs and to govern itself under certain general laws of the State as well as the Constitution.

Its need is not in order to bring about immediately . . . any new benefits to Hawaiians, but to do as the Constitution ought, which is to set the framework by which resources can be managed and benefits achieved through setting the frame by which those who are to receive and enjoy these benefits might in some democratic manner govern the disposition of these resources and settle on policies among themselves through the process of election and through the process of scrutiny by those to whom they are responsible. That . . . is what the proposal for a Hawaiian trust creates.

. . .

It allows for an umbrella organization which could someday embrace the Hawaiian homes commission, all of

the Hawaiian home lands department and all the functions. It also provides a receptacle for the possible receipt and administration of any reparations that might be coming in the future.

The board of trustees is created as the governing body. It's to be made up of beneficiaries who are native Hawaiians themselves under the broader definition of that meaning.

. . .

But it does have the added benefit of allowing those who are direct beneficiaries to set their own policies and govern their own affairs through a democratic process.

. . .

DELEGATE PETERSON: . . . I think it's time that native Hawaiians have more impact on their own future, and the transfer to Hawaiians of the responsibilities of self-government is only right and proper.

. . .

DELEGATE BARR: . . .

It seems to be clear that it was the intent of the Admission Act that we recognize a special claim, a special interest on the part of an aboriginal people in these Islands.

. . .

DELEGATE STERLING: . . . The basic interest of Congress, to rehabilitate the Hawaiian people, continues and the errors of the Hawaiian Homes Commission Act, 1920, were rectified by setting up a second trust in the

Admission Act. Rather than attempt to draft a second rehabilitation program, Congress delegated the task to the state legislature.

. . .

But we set this up, as the chairman so beautifully stated, as the receptacle not only to comply with the Admission Act but for any other possible benefits that may be coming to the Hawaiian people.

STANDING COMMITTEE – REPORT NO. 59
(pp. 643-47) Office of Hawaiian Affairs

In looking to the future, your Committee decided that it is of utmost importance to establish a trust entity that would be for all individuals whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778, the date that marks the arrival of Captain Cook to these shores . . . Your Committee determined that the time was ripe to establish a trust entity with an elected board of trustees that would control and manage the assets and inheritance, and financial assistance belonging to all native Hawaiians, and to formulate policy relating to their affairs.

. . .

Although your Committee was tempted to change this outmoded rule from the 1920s, your Committee concluded that this responsibility should be assumed by the Office of Hawaiian Affairs.

The Admission Act does not specify what percentage of the trust shall be allocated to native Hawaiians of one-

half blood. The committee members felt that the proportion should rightfully be based either on equal division or at least on a percentage of the five purposes.

. . .

As a result of the revolution on January 17, 1893, the crown lands, which belonged to the Hawaiian people, were ceded by the Republic of Hawai[']i to the United States. These lands were conveyed back to the State on Hawai[']i's admission to the Union pursuant to Section 5(b) of the Admission Act. Section 5(f) of the Admission Act created a trust of these public lands separate and apart from the lands defined as "available lands," by Section 203 of the [Hawaiian Homes Commission Act], 1920, as amended. Your Committee found that the Section 5(f) trust created two types of beneficiaries and several trust purposes one of which is native Hawaiians of one-half blood.

Article XI is amended by adding a new section to read:

"OFFICE OF HAWAIIAN AFFAIRS;
ESTABLISHMENT OF BOARD OF TRUSTEES

"Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are native Hawaiians, in accordance with law. The board members shall be native Hawaiians. There shall be not less than 9 members of the board of trustees; provided that each of the following

islands have at least one representative: O[']ahu, Kaua[']i, Maui, Moloka[']i and Hawai[']i. The board shall select a chairman from its members."

Your Committee added this new Section 5 relating to the Office of Hawaiian Affairs and the establishment of an elected board of trustees in order to provide a receptacle for any funds, land or other resources earmarked for or belonging to native Hawaiians, and to create a body that could formulate policy relating to all native Hawaiians and make decisions on the allocation of those assets belonging to native Hawaiians. Moreover, in looking to the future the office will be able to receive and administer any reparations money, which will probably be awarded to all native Hawaiians regardless of blood quantum.

Your Committee is unanimously and strongly of the opinion that people to whom assets belong should have control over them . . . [Y]our committee concluded that a board of trustees chosen from among those who are interested parties would be the best way to insure proper management and adherence to the needed fiduciary principles . . . The election of the board will enhance representative governance and decision-making accountability and, as a result, strengthen the fiduciary relationship between the board member, as trustee, and the native Hawaiian, as beneficiary.

. . .

The committee intends that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency . . . The committee felt that it was important to arrange a method whereby the

assets of Hawaiians could be kept separate from the rest of the state treasury. The committee learned that in the past there has been commingling of funds intended for native Hawaiians of one-half blood with other moneys in the state treasury. The committee felt it imperative that this practice stop.

Article XI is amended by adding a new section to read:

"POWERS OF BOARD OF TRUSTEES

"Section 6. The board shall exercise power in accordance with law, to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in Section 4 for those native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended; formulate policy relating to affairs of native Hawaiians, and exercise control over real and personal property set aside by state, federal, or private sources and transferred to said Board for Native Hawaiians.["]

Your Committee decided to grant native Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare by granting to the board of trustees powers to "formulate policy relating to affairs of native Hawaiians[ ]" . . . applicable to the nature and purposes of a trust entity for native peoples.

. . .

The committee intends this section to be broad enough to include within its scope the administration and

management of the native Hawaiian land trust created by the Hawaiian Homes Commission Act of 1920.

. . .

Pursuant to Section 6, the board of trustees could assume the trust responsibilities of the Hawaiian homes commission.

. . .

The consolidation of the two trusts under the control and management of a single board would facilitate the attainment of the objective of the trusts: to provide for the betterment of the conditions of native Hawaiians.

. . .

Your Committee concluded that these Sections 5 and 6, taken together, are of utmost importance for they provide for accountability, self-determination, methods of self-sufficiency through assets and a land base, and the unification of all native Hawaiian people.

Unlike the Act and the Section 5(f) trust, this trust is established for the benefit of all native Hawaiians, including those defined as native Hawaiians under the Hawaiian Homes Commission Act, 1920, as amended, and the restoration of their culture. The committee recognizes the right of native Hawaiians to govern themselves and their assets by their assumption of the trust responsibility imposed on the State to better their condition.

. . .

"The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races

inhabiting the Hawaiian Islands previous to 1778." Native Hawaiians of one-half blood will not be a subgroup under this definition. The committee believes that the time has come to include all native Hawaiians, regardless of blood quantum, for the number of descendants is increasing. This qualification has proved to be a factor in dividing the Hawaiian community – mothers and fathers from their children, cousins from cousins, friends from friends. Moreover, the removal of a blood qualification will be in line with the current policy of the federal government to extend benefits for Hawaiians to all Hawaiians regardless of blood quantum.

APPENDIX E

STATEMENT
OF
UNITED STATES SENATOR DANIEL K. INOUYE

The *amicus curiae* brief is a legal document that should be devoid of non-legal matters. However, I believe that to understand the special status that Native Hawaiians have in our State and in our nation, one must consider the history of our islands. In ancient times, the native people of Hawai'i were the only people populating our insular lands. When others began to migrate to Hawai'i, they found a highly sophisticated society with advanced forms of technology for that time and an understanding of astronomical principles by the native people that explained their ability to navigate the far reaches of the Pacific, long before Columbus got lost on his way to India. They found a culture that was rich in dance (*hula*) and chants that conveyed the history of the people. They found a people whose cultural mores were based upon a respect for all living things. Life was an inseparable part of the land and the water, and like other native people of America, Native Hawaiians were the first environmentalists and conservationists in Hawai'i.

Thus, long before the United States decided it had a strategic interest in Hawai'i and long before the Federal government took an interest in the deteriorating conditions of the native people of Hawai'i, Native Hawaiians ruled our islands and had an effective system of governance in place. It was their culture and their history which informed all aspects of life. Those who later came to our shores understood this and so they built their lives in and around the society that had been shaped and given expression by the native people.

Even today, there is little in Hawai'i that does not bear the imprimatur of Native Hawaiiana. By law, the Native Hawaiian language is one of the two official languages of the State. By law, the streets have Native Hawaiian names. The state motto, *Ua Mau ke ea o ka'āina i ka pono* (the life of the land is perpetuated in righteousness), is Native Hawaiian. We officially celebrate *Aloha* Week, the birthday of the first king, King Kamehameha, and the birthday of our first Native Hawaiian representative in Congress, Prince Jonah Kūhīo Kalaniana'ole. *"Aloha"* and the spirit of this word has become part of our way of life. To some it may sound like a tourist phrase, but for most of us in Hawai'i, *aloha* is something real – the spirit of understanding, the spirit of tolerance, the spirit of love.

It is true that wave after wave of immigrants to Hawai'i's shores later effected the displacement of Native Hawaiians in their own homeland, the decimation of their numbers from diseases for which they had no immunities, and the shocking statistics which today bear witness to a people dispossessed of their land, their language, and their culture. It was this contemporary reality that informed the debates of the delegates to the State's 1978 constitutional convention. They observed that the circumstances of the native people were dire, that the Native Hawaiian culture and language were being lost, and that the traditional ways and subsistence lifestyle of the native people were being foreclosed. The delegates recognized that Native Hawaiians needed the means to regain a measure of control over their lives – self-determination.

Throughout the convention debates, the provisions of the U.S. Constitution were taken into consideration and were constantly kept in mind. There was never an intent to abrogate those provisions. Rather, the amendments to the State constitution proposed by the delegates reflect an honest and sincere attempt on the part of the people of Hawai'i to rectify the wrongs of the past, and to put into being the mandate our Federal government – the betterment of the conditions of Native Hawaiians.

The actions taken by the constitutional convention delegates and later the citizens of Hawai'i were very simply measures to assure the survival of a people. The proceedings of the convention make clear that these actions were undertaken in furtherance of the authority delegated to the State of Hawai'i in the 1959 Admission Act. But in all likelihood, given the history of our State and the importance of the native people to the fabric of our society, the citizens of Hawai'i would have adopted the amendments to the State constitution affecting Native Hawaiians even if the Federal authority had not been delegated to the State. Because they knew, as we know today, that without the Hawaiians, there would be no Hawai'i.

I pray that the Honored Justices would take this non-legal aspect of the relationship between the native people of Hawai'i and the State of Hawai'i into consideration as they ponder the arguments offered by the many who have considered this matter of sufficient importance to submit their *amicus curiae* briefs. Most respectfully, I bid you *aloha*.

STATEMENT OF UNITED STATES SENATOR DANIEL K. AKAKA

The essence of Hawai'i is captured not by the physical beauty of its islands, but by the beauty of its people and their willingness to welcome others into their society in order to share their culture, environment and lives. This attitude, often referred to as the "*Aloha* spirit," originates from the culture and traditions of Hawai'i. It is one of the many attributes that contribute to the uniqueness of the State of Hawai'i. I'd like to share with you my views about the essence of Hawai'i and why the people of Hawai'i voted in 1978 to empower the indigenous people, the Native Hawaiians, to establish the Office of Hawaiian Affairs as a means with which to address the betterment of the conditions of the Native Hawaiians.

Hawaii's state motto, *Ua mau ke'ea'o ka'āina'i ka pono*, "the life of the land is perpetuated in righteousness," captures the culture of Native Hawaiians. Prior to western contact, the Native Hawaiians lived in an advanced society that was steeped in science. The Native Hawaiians honored their *'āina* (land) and environment, and therefore developed methods of irrigation, agriculture, aquaculture, navigation, medicine, fishing and other forms of subsistence whereby the land and sea were efficiently used without waste or damage. Respect for the environment and for others formed the basis of their culture and tradition.

For this reason, unlike a number of other aboriginal peoples, the Native Hawaiians welcomed foreigners into their society. Over time, this generous attitude decimated

the indigenous population and almost destroyed the precious traditions and culture of ancient Hawai'i. Hawai'i's monarchy was overthrown, and a provisional government was established which proclaims Hawai'i a republic and transferred vast amounts of land to the United States. The perpetuation of Hawai'i's important cultural traditions were discouraged by leaders convinced of their primacy and committed exclusively to the propagation of Western values and conventions. Despite these events, the remaining Native Hawaiians continued to share their culture and tradition with non-Native Hawaiians and continued to include them into their society.

The fact that the entire State of Hawai'i voted to amend the State Constitution in 1978 to establish the Office of Hawaiian Affairs is significant because it illustrates the recognition of the importance of Hawaiian culture and traditions as the foundation for the *Aloha* spirit. The vote recognized the need to preserve Hawaiian values, culture and tradition. Whereas parts of Native Hawaiian culture and traditions were disparaged, the recognition of their importance has led to a renaissance of the language and culture resulting in an increase in the number of students who are now fluent in the Hawaiian language and who have adopted and adapted ancient Hawaiian traditions. This has been evident in areas such as agriculture and aquaculture, where traditional practices have proven to be environmentally and economically sound and useful in current applications. This recognition has not divided the State, but instead has enriched Hawai'i's society. The true significance of the vote is the fact that the entire state recognized the generosity and hospitality of the Native Hawaiians, the need to

preserve their customs and traditions, and the shared responsibility of Hawai'i's people to acknowledge and redress past injustices.

Hawai'i is truly unique. Since first contact by Captain Cook in 1778 – a period which parallels the history of our Nation – Hawai'i has had at least seven different forms of government: societies ruled by chiefs, monarchy, provisional government, republic, territory, martial law and state. The people of Hawai'i take pride not only in their unique history, but also in each other and in the perpetuation of the *Aloha* spirit as an embodiment of Native Hawaiian traditions and culture.

Indeed, the "Spirit of *Aloha*" has endured and flourished in spite of pestilence, political upheaval and poverty. It transcends political and geographic demarcations and remains the noblest legacy of the Native Hawaiian people to their American brethren and the world.